

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMIE LEE ANDREWS, AS)
SURVIVING SPOUSE OF MICAH LEE)
ANDREWS, DECEASED, AND JAMIE)
LEE ANDREWS, AS ADMINISTRATOR) NO. 1:14-CV-3432-SCJ
OF THE ESTATE OF MICAH LEE) ATLANTA, GEORGIA
ANDREWS, DECEASED,)
PLAINTIFF,) MAY 16, 2019
V.)
AUTOLIV JAPAN, LTD.,)
DEFENDANT.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF: TEDRA L. CANNELLA
JAMES E. BUTLER, JR.
RORY A. WEEKS
MICHAEL F. WILLIFORD
FOR THE DEFENDANT: DOUGLAS G. SCRIBNER
WILLIAM J. REPKO, III
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1 (ATLANTA, FULTON COUNTY, GEORGIA, MAY 16, 2019, IN
2 OPEN COURT)

3 THE CLERK: THE COURT CALLS THE MATTER OF JAMIE LEE
4 ANDREWS V. AUTOLIV JAPAN, LTD., AND OTHERS, CIVIL ACTION NUMBER
5 1:14-CV-3432.

6 THE COURT: GOOD MORNING, MS. CANNELLA, MR. BUTLER
7 AND MR. WEEKS. AND WHO ELSE HAVE I MISSED?

8 MR. BUTLER: GOOD MORNING.

9 MS. CANNELLA: GOOD MORNING, YOUR HONOR. WE ALSO
10 HAVE MICHAEL WILLIFORD WITH US TODAY.

11 THE COURT: GOOD MORNING TO YOU ALL AS WELL.

12 MS. CANELLA: AND MS. CATHY HUFF, WHO IS A PARALEGAL
13 WITH OUR OFFICE.

14 THE COURT: GOOD MORNING, MS. HUFF. PROBABLY THE
15 MOST IMPORTANT PERSON THERE.

16 GOOD MORNING, MR. SCRIBNER.

17 MR. SCRIBNER: GOOD MORNING.

18 THE COURT: AND FORGIVE ME, MR. HERGENROTHER --
19 MS. HERGENROTHER.

20 MS. HERGENROTHER: HERGENROTHER.

21 THE COURT: AND MR. REPKO.

22 MR. REPKO: GOOD MORNING.

23 MS. HERGENROTHER: GOOD MORNING.

24 THE COURT: THIS MORNING, WHAT I WANT TO DO THIS
25 MORNING, I WANT TO START OFF WITH THE MOTION FOR SANCTIONS, AND

1 THEN WHEN WE FINISH WITH THE MOTION FOR SANCTIONS, WE WILL DEAL
2 WITH THE MOTIONS ON EXCLUSION ON THE EXPERTS.

3 I HAVE NOT SET A TIME LIMIT ON YOU ALL THIS MORNING.
4 ALL OF YOU ALL ARE EXPERIENCED LAWYERS. YOU KNOW WHAT YOU NEED
5 TO TELL ME IN THE PERIOD OF TIME YOU NEED TO TELL ME. HOWEVER,
6 IF SOMEBODY FORGETS THAT, I WILL TELL YOU WHEN I HAVE HEARD
7 ENOUGH, OKAY?

8 MS. CANNELLA: THANK YOU, YOUR HONOR.

9 AND, YOUR HONOR, WE BROUGHT MR. MEYER FROM
10 CALIFORNIA, WHO IS ONE OF THE EXPERTS AND THE SUBJECT OF ONE OF
11 THE DAUBERT MOTIONS.

12 THE COURT: OKAY.

13 MS. CANNELLA: SO IF THE COURT WOULD LIKE ANY
14 GUIDANCE ON ORDER, WE WOULD PROPOSE, AT LEAST, TO PUT MR. MEYER
15 UP SO WE CAN SHUFFLE HIM OFF TO CALIFORNIA AND GET THAT OUT OF
16 THE WAY. HE IS RELEVANT TO THE MOTION FOR SANCTIONS AND
17 SEVERAL OF THE DAUBERT MOTIONS.

18 THE COURT: I DON'T HAVE ANY PROBLEM. DO YOU HAVE
19 ANY PROBLEM WITH THAT?

20 MR. SCRIBNER: NO PROBLEM, YOUR HONOR.

21 THE COURT: THEN WE CAN PROCEED THAT WAY.

22 I HAVE READ 85 PERCENT OF EVERYTHING YOU ALL SENT ME.
23 THERE WAS A LOT OF NOTEBOOKS, A LOT OF MOTIONS, A LOT OF
24 DOCKETED THINGS. I AM PRETTY WELL UP TO DATE, BUT IF ANYBODY
25 WANTS TO MAKE AN OPENING STATEMENT, I WILL HEAR FROM YOU.

1 MS. CANNELLA: WE WOULD NOT. THANK YOU, SIR.

2 MR. SCRIBNER: NO, YOUR HONOR.

3 THE COURT: THEN YOU MAY PROCEED.

4 THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND, PLEASE?

5 - - -

6 STEVEN E. MEYER,

7 CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFF, BEING FIRST

8 DULY SWORN, TESTIFIED AS FOLLOWS:

9 - - -

10 THE CLERK: HAVE A SEAT. IF YOU COULD PLEASE STATE

11 AND SPELL YOUR NAME FOR THE RECORD.

12 THE WITNESS: STEVEN WITH A "V" E. MEYER, M-E-Y-E-R.

13 MS. CANNELLA: YOUR HONOR, WE UNDERSTAND THE COURT

14 HAS THE POWERPOINT IN FRONT OF IT; IS THAT CORRECT?

15 THE COURT: IT'S RIGHT OVER THERE.

16 MS. CANNELLA: OKAY. AND I ALSO HAVE A HARD COPY FOR

17 THE RECORD, PLAINTIFF'S HEARING 1108.

18 THE COURT: OKAY. THANK YOU.

19 MS. CANNELLA: AND WE HAVE PROVIDED A COPY TO DEFENSE

20 COUNSEL ALREADY.

21 MR. SCRIBNER: YES. THANK YOU.

22 MS. CANNELLA: DO YOU HAVE A PREFERENCE ABOUT WHERE I

23 AM?

24 THE COURT: AS LONG AS THE COURT REPORTER CAN HEAR

25 YOU, YOU CAN MOVE AROUND AS YOU SEE FIT.

1 MS. CANNELLA: THANK YOU.

2 DIRECT EXAMINATION

3 BY MS. CANNELLA:

4 Q. GOOD MORNING, MR. MEYER.

5 A. GOOD MORNING.

6 Q. I WANT TO WALK THROUGH SOME OF YOUR BACKGROUND AND
7 QUALIFICATIONS BEFORE WE GET GOING WITH THE ACTUAL WRECK.

8 A. OKAY.

9 Q. YOU ARE A REGISTERED PROFESSIONAL ENGINEER, CORRECT?

10 A. I AM. I AM LICENSED IN THE STATE OF CALIFORNIA AS A
11 PROFESSIONAL ENGINEER.

12 Q. AND WHAT DOES BEING A PROFESSIONAL ENGINEER MEAN?

13 A. IT MEANS THAT I HAVE A DEGREE IN MECHANICAL ENGINEERING IN
14 MY CASE FROM AN ACCREDITED UNIVERSITY. I HAVE A MINIMUM
15 REQUIRED NUMBER OF YEARS OF EXPERIENCE. I HAVE SAT FOR TWO
16 EIGHT-HOUR EXAMS, ONE COVERING ALL ENGINEERING DISCIPLINES, NOT
17 JUST MECHANICAL BUT OTHERS AS WELL, AND THEN AFTER OBTAINING
18 SOME MORE EXPERIENCE, I THEN SAT FOR A SECOND EIGHT-HOUR EXAM
19 IN MY DISCIPLINE SPECIFICALLY, WHICH IS MECHANICAL ENGINEERING.
20 AFTER COMPLETING ALL OF THAT YOU ARE GRANTED THE PROFESSIONAL
21 LICENSE.

22 THE COURT: CAN YOU SPEAK UP A LITTLE LOUDER?

23 THE WITNESS: YES. I'M SORRY. IN MY MIND, IT'S
24 QUITE LOUD OVER HERE.

25 - - -

1 BY MS. CANNELLA:

2 Q. AND WHEN DID YOU GET YOUR DEGREE IN MECHANICAL

3 ENGINEERING?

4 A. 1986.

5 Q. AND HAVE YOU ALSO TAKEN GRADUATE-SCHOOL-LEVEL CLASSES IN

6 MECHANICAL ENGINEERING?

7 A. YES.

8 Q. AND HOW LONG HAVE YOU BEEN STUDYING AUTOMOBILES AND AUTO

9 SAFETY?

10 A. ALMOST 30 YEARS.

11 Q. FOR HOW LONG HAVE YOU WORKED AT SAFETY ANALYSIS AND

12 FORENSIC ENGINEERING?

13 A. I WENT TO WORK AT WHAT IS NOW KNOWN AS THAT COMPANY IN

14 1991, SO WHATEVER THAT IS, 26, 27.

15 Q. AND YOU ARE A MEMBER OF SEVERAL PROFESSIONAL ASSOCIATIONS

16 AS WELL?

17 A. YES.

18 Q. WHICH ONES?

19 A. THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS, NATIONAL

20 SOCIETY OF PROFESSIONAL ENGINEERS, NATIONAL ACADEMY OF FORENSIC

21 ENGINEERS, SOCIETY OF AUTOMOTIVE ENGINEERS. THOSE ARE THE ONES

22 THAT COME TO MIND.

23 Q. I AM GOING TO HAND YOU A COPY OF YOUR RESUME, WHICH WE

24 HAVE MARKED AS PLAINTIFF'S HEARING EXHIBIT 320.

25 MS. CANNELLA: IF I MAY APPROACH?

1 THE COURT: OKAY. JUST GIVE ME WHAT YOU THINK I NEED
2 TO HAVE. WE'LL FIND A PLACE FOR IT.

3 MS. CANNELLA: YES, YOUR HONOR.

4 BY MS. CANNELLA:

5 Q. I COUNT 82 PUBLICATIONS AND INVITED LECTURES ON THE
6 RESUME. DOES THAT SOUND ABOUT RIGHT?

7 A. IT DOES.

8 Q. AND A NUMBER OF THEM RELATE TO SEATBELT RESTRAINT SYSTEMS,
9 CORRECT?

10 A. YES.

11 Q. DO A NUMBER OF THEM ALSO RELATE TO BIOMECHANICAL AND
12 OCCUPANT KINEMATICS OPINIONS?

13 A. YES. THOSE TWO GO HAND IN HAND MOST TIMES.

14 THE COURT: THE DEFENDANT HAS NO OBJECTION TO
15 EXHIBIT 1?

16 MR. SCRIBNER: NO OBJECTION, YOUR HONOR.

17 THE COURT: ADMITTED WITHOUT OBJECTION.

18 BY MS. CANNELLA:

19 Q. AND HOW LONG HAVE YOU BEEN STUDYING SEATBELT DESIGNS AND
20 SEATBELT PERFORMANCE SPECIFICALLY?

21 A. SINCE THE EARLY '90S, SO THE DECADE OF THE '90S AND THE
22 TWO THOUSANDS, SO QUITE A FEW YEARS.

23 Q. AND HOW MANY INVESTIGATIONS OR CASES DO YOU THINK YOU HAVE
24 LOOKED AT?

25 A. I STOPPED COUNTING AT ABOUT TWO TO THREE THOUSAND.

1 Q. HOW MANY TIMES HAVE YOU TESTIFIED?

2 A. I DON'T KNOW. PROBABLY, IF WE INCLUDE DEPOSITIONS, A
3 COUPLE OF HUNDRED, CERTAINLY, MAYBE A LITTLE MORE THAN THAT.

4 Q. AND HAS ANY COURT EVER EXCLUDED YOUR OPINIONS?

5 A. NOT ULTIMATELY THAT I AM AWARE OF.

6 Q. YOU ARE ALSO A LICENSED ATTORNEY, CORRECT?

7 A. I AM. I HAVE A LICENSE IN CALIFORNIA.

8 Q. DO YOU PRACTICE LAW?

9 A. NO.

10 Q. HAVE YOU USED YOUR LAW LICENSE AT ANY POINT DURING THIS
11 INVESTIGATION OR GIVING YOUR OPINIONS IN THIS CASE?

12 A. NO. I HAVEN'T USED THAT IN DECADES.

13 Q. OKAY. I WANT TO TALK ABOUT THE COLLISION ITSELF NOW AND
14 WE CAN USE YOUR POWERPOINT THAT YOU PREPARED FOR THAT.

15 CAN YOU EXPLAIN TO THE COURT HOW THE COLLISION
16 HAPPENED?

17 A. YES. MR. ANDREWS WAS DRIVING DOWN A TWO-LANE HIGHWAY,
18 I-575 NORTH IN COBB COUNTY, WHEN HE ATTEMPTED TO AVOID A TURTLE
19 IN THE ROAD, SWERVED TO THE RIGHT, LEFT THE ROAD AND IMPACTED A
20 GROUP OF TREES OFF THE SIDE OF THE ROADWAY.

21 Q. AND TO BE CLEAR, THESE AREN'T YOUR OPINIONS; THESE ARE
22 OPINIONS YOU ARE RELYING ON FROM ANOTHER EXPERT, CORRECT?

23 A. YES. THAT'S DESCRIBED IN THE POLICE REPORT AS WELL AS
24 OTHER EXPERTS, THE RECONSTRUCTIONISTS AND SO FORTH.

25 Q. CAN YOU TELL US WHAT WE SEE IN THIS SLIDE?

1 A. THIS IS THE SCENE, SO THE TURTLE THAT WAS UNSUCCESSFULLY
2 AVOIDED. THE VEHICLE AT ITS REST POSITION IS THE TOP RIGHT.
3 YOU SEE THE TAILLIGHTS THERE LOOKING INTO THE TREE LINE AND
4 THEN YOU SEE THE GROUP OF TREES ON THE BOTTOM RIGHT PHOTOGRAPH.
5 IT WAS EFFECTIVELY A FRONTAL IMPACT FOR MR. ANDREWS' VEHICLE
6 INTO THE TREES.

7 Q. OKAY. I AM GOING SKIP FORWARD AND TALK ABOUT YOUR
8 INSPECTION.

9 A. YES.

10 Q. CAN YOU TELL US ABOUT THAT INSPECTION, WHAT YOU OBSERVED
11 OF THE CAR?

12 A. THE VEHICLE IS A 2005 MAZDA3 HATCHBACK. AGAIN, IT WAS
13 INVOLVED IN A FRONTAL IMPACT, SO I CERTAINLY OBSERVED AND
14 DOCUMENTED FRONTAL IMPACT DAMAGE. THAT IS CONFINED TO THE
15 FRONT OF THE VEHICLE. THERE IS NOT WHAT WE WOULD REFER TO AS
16 INTRUSION OF ANY SIGNIFICANCE. IN OTHER WORDS, THE CRUMPLE
17 ZONE AT THE FRONT OF THE VEHICLE DID WHAT WE WOULD EXPECT IT TO
18 DO AND THAT'S WHERE THE CRUSH WAS OR THE CRUMPLING.

19 WHEN YOU GET BACK INTO THE OCCUPANT COMPARTMENT,
20 THERE IS NOT -- YOU SEE THE DRIVER'S WINDOW IS NOT FRACTURED OR
21 BROKEN. THE PASSENGER SIDE FRONT WINDOW IS NOT FRACTURED OR
22 BROKEN. THAT TELLS US THERE IS NOT A LOT OF INTRUSION OF THE
23 STRUCTURE INTO THE VEHICLE. BUT IT IS A FRONTAL IMPACT. THAT
24 ALSO GIVES ME SOME INSIGHT AS TO THE SEVERITY OF THE COLLISION.

25 I ALSO NOTE THAT THE -- NOTICE THAT THE VEHICLE IS

1 EQUIVALENT, THE '05 IS THE SAME VEHICLE FROM 2003 TO 2006.
2 THAT COMES TO BE KNOWN AS A J48C PLATFORM. THAT'S JUST THE
3 DESIGNATION THAT MAZDA GIVES IT INTERNALLY.

4 IT WAS UPDATED IN 2007 AND THE WHOLE RELEVANT RANGE
5 RAN FROM '03 TO '09, BUT THERE WAS SOME CHANGES IN '07.

6 Q. OKAY. I WANT TO GO BACK TO SOMETHING YOU MENTIONED TO
7 FOCUS ON IT A LITTLE BIT MORE.

8 YOU SAID THAT THE FRONT OF THE CAR ABSORBED, HAD A
9 LOT OF CRUSH.

10 A. YES.

11 Q. AND THAT ABSORBED ALL THE ENERGY FROM THE WRECK; IS THAT
12 RIGHT?

13 A. YES. THE FRONT CRUMPLE ZONE IS SOMETIMES WHAT WE CALL IT,
14 BUT THE FRONT CRUMPLE ZONE DID WHAT IT WAS SUPPOSED TO DO AND
15 THAT IS IT IS DESIGNED TO CRUSH AT THE FRONT. WE WANT TO CRUSH
16 THE VEHICLE IN THE CRUMPLE ZONE BEFORE THE COMPARTMENT.

17 SO THE FRONT BUMPER STRUCTURE, THE FRAME RAILS, THE
18 ENGINE COMPARTMENT ABSORBED AND CRUSHED THAT ENERGY,
19 MAINTAINING, GENERALLY SPEAKING, THE OCCUPANT COMPARTMENT IN
20 ITS CONDITION.

21 Q. OKAY. AND SO JUST TO BE CLEAR, THEN, ONCE YOU KEEP THAT
22 OCCUPANT COMPARTMENT SAFE WITHOUT A LOT OF CRASH DAMAGE COMING
23 INTO THE OCCUPANT COMPARTMENT, THAT ALLOWS THE OCCUPANT TO STAY
24 SAFE, CORRECT?

25 A. THAT'S THE IDEA, YES, ABSOLUTELY.

1 Q. OKAY. I WANT TO LOOK AT THESE PHOTOS OF THE STEERING
2 WHEEL, AND COULD YOU TELL US, WHAT DO WE SEE IN THE STEERING
3 WHEEL PHOTO ON THE RIGHT?

4 A. THE STEERING WHEEL IS DAMAGED. IT WAS BENT AND HAD
5 CLEARLY BEEN IMPACTED AND THAT'S WHAT WE SEE ON THE RIGHT. SO
6 DOES THIS -- SOMETIMES I CAN DRAW ON THESE. NO?

7 OKAY. THE PHOTOGRAPH ON THE RIGHT. YOU SEE THE
8 BUTTONS ON THE STEERING WHEEL TO CONTROL THE RADIO VOLUME AND
9 WHAT HAVE YOU AND YOU SEE --

10 THE COURT: LET'S MAKE SURE. YOUR RIGHT? OKAY.
11 THERE YOU GO.

12 THE WITNESS: HERE.

13 THE COURT: ALL RIGHT. I'M AT THE SAME PLACE.

14 THE WITNESS: SO THERE'S DEFORMATION THERE OF THE
15 STEERING WHEEL HUB INDICATING SOME CONTACT AND SOME FORCE
16 TRANSFER THERE.

17 THE COURT: HOLD ON.

18 MS. CANNELLA: INDICATING --

19 THE COURT: HOLD ON.

20 MS. CANNELLA: SORRY.

21 THE CLERK: IT'S COMING BACK UP. I TURNED IT ON.

22 MS. CANNELLA: OH, THANK YOU. HOW DO I DO THAT?

23 OKAY. THANK YOU, MS. WRIGHT.

24 BY MS. CANNELLA:

25 Q. OKAY. SO THAT DAMAGE INDICATES SOMETHING -- SOMEBODY HIT

1 IT, CORRECT?

2 A. CORRECT, YES. IT'S WHAT WE WERE GOING TO -- ULTIMATELY WE
3 ARE GOING TO REFER TO THAT OR I AM GOING TO REFER TO THAT AS
4 OCCUPANT CONTACT. THAT'S ULTIMATELY OCCUPANT CONTACT EVIDENCE.

5 Q. AND THE PATTERN, THAT DOTTED PATTERN THERE ON THE STEERING
6 WHEEL, YOU CAN SEE IT IN BOTH PHOTOS, THE GRIP THERE WHERE
7 PEOPLE ARE SUPPOSED TO HOLD THE STEERING WHEEL. DO YOU SEE
8 THAT?

9 A. I THINK THIS?

10 Q. YES, SIR.

11 A. YES.

12 Q. OKAY. I AM GOING TO HAND YOU WHAT I HAVE MARKED AS
13 PLAINTIFF'S HEARING EXHIBIT 2.

14 THE COURT: THANK YOU.

15 THE WITNESS: I KNOW HOW TO DRAW ON IT NOW, BUT I
16 DON'T KNOW HOW TO ERASE IT.

17 BY MS. CANNELLA:

18 Q. AND WE PUT IT IN AN ENVELOPE BECAUSE IT IS AN AUTOPSY
19 PHOTO, BUT DID YOU SEE ANYTHING ON THE AUTOPSY PHOTOS THAT
20 MATCHED THIS PATTERN ON THE GRIP?

21 A. YES. MR. ANDREWS HAS A SIMILAR PATTERN ON HIS FACE
22 IMPRINT.

23 Q. AND DOES THAT TELL YOU THAT HIS FACE HIT THE STEERING
24 WHEEL?

25 A. YES.

1 Q. AND CAN YOU TELL ME WHAT WE SEE IN THE SECOND PICTURE?

2 A. IN THE SECOND PICTURE, THIS IS A PHOTOGRAPH OF WHAT WE
3 CALL THE D-RING FOR MR. ANDREWS' SEATBELT, SO THAT THE SEATBELT
4 HAS SOME VARIOUS COMPONENTS TO IT. ONE OF THE THINGS THAT'S
5 IMPORTANT HERE IS THE D-RING AND THE D-RING IS THAT PIECE THAT
6 TYPICALLY HANGS OVER YOUR LEFT SHOULDER IN THE DRIVER'S
7 POSITION?

8 THE COURT: ONE SECOND. NO OBJECTION TO EXHIBIT 2?

9 MR. SCRIBNER: NO OBJECTION, YOUR HONOR.

10 THE COURT: ADMITTED WITHOUT OBJECTION.

11 MS. CANNELLA: DID YOU WANT THE GRAY ONE?

12 THE WITNESS: YEAH, THAT'S FINE.

13 MS. CANNELLA: MAY I APPROACH AGAIN?

14 THE COURT: YES.

15 MS. CANNELLA: IS IT OKAY IF I APPROACH HIM, YOUR
16 HONOR, WITH EXHIBITS AND THINGS LIKE THAT?

17 THE COURT: YES, YES.

18 MS. CANNELLA: THANK YOU.

19 BY MS. CANNELLA:

20 Q. OKAY. AND I HAVE HANDED YOU THAT JUST SO YOU CAN
21 ILLUSTRATE TO THE COURT THE DIFFERENT PARTS OF THE SEATBELT.
22 CAN YOU GIVE US AN OVERVIEW JUST IN A BASIC WAY?

23 A. SO THE FEW PARTS THAT WE ARE GOING TO BE TALKING ABOUT IS
24 THE RETRACTOR. THAT'S THIS PIECE HERE. THE RETRACTOR IS THE
25 PIECE THAT RETRACTS THE BELT UP INTO ITS STOWED POSITION. SO

1 WHEN YOU TAKE YOUR SEATBELT -- SO WHEN YOU TAKE YOUR SEATBELT
2 OFF, IT ROLLS UP ONTO THE DOORJAMB THERE, GOES UP BEHIND THE
3 TRIM AND IT'S STOWED AWAY. WHAT DOES THAT IS THE RETRACTOR.
4 SO THE RETRACTOR LITERALLY RETRACTS THE WEBBING INTO ITS STOWED
5 POSITION. AND WHEN IT DOES THAT, IT ROLLS UP ON THIS SPOOL AND
6 THAT'S WHERE IT'S STOWED.

7 AT THE TOP OF THE B-PILLAR, WHICH IS THAT STRUCTURE
8 AT THE BACK OF YOUR DOOR FRAME, IS TYPICALLY WHAT'S CALLED THE
9 D-RING, WHICH IS THIS BLACK PIECE, AND THAT'S UP OVER THE
10 DRIVER'S POSITION. THAT'S GOING TO BE AT YOUR LEFT SHOULDER
11 AND THAT'S WHAT THE PICTURE IS THERE.

12 AND THEN YOU HAVE, THE OTHER THING WE ARE GOING TO
13 TALK ABOUT IS THE TONGUE, OTHERWISE KNOWN AS THE LATCH PLATE,
14 AND THAT'S THE TONGUE THAT INSERTS INTO THE BUCKLE.

15 Q. THANK YOU.

16 OKAY. SO WHAT WE ARE LOOKING AT HERE IN THIS PICTURE
17 IS THE D-RING, WHICH IS THE PIECE TO THE LEFT OF THE DRIVER'S
18 HEAD WHERE THE SEATBELT WEBBING IS SLIDING THROUGH?

19 A. OVER HIS LEFT SHOULDER, BASICALLY, YES.

20 Q. LEFT SHOULDER, OKAY. THANK YOU.

21 A. YES.

22 Q. AND WHAT DOES THE ABRASIONS THAT YOU SEE HERE TELL YOU?

23 A. SO WHAT HAPPENS IN AN ACCIDENT, PARTICULARLY A FRONTAL
24 ACCIDENT, IN A FRONTAL COLLISION, IS REALLY WHAT HAPPENS IS THE
25 VEHICLE STOPS UNDERNEATH YOU. YOU KEEP GOING.

1 WE THEN RELY UPON THE SEATBELT TO HOLD US BACK, TO
2 HOLD US IN OUR SEAT AND TO KEEP US FROM FLYING FORWARD INTO THE
3 STEERING WHEEL OR WINDSHIELD OR WHAT HAVE YOU.

4 THE SEATBELT IN THIS RETRACTOR IS A DEVICE THAT
5 SENSES THAT CRASH AND LOCKS UP SO THAT THE SPOOL WON'T TURN.
6 THAT'S THE IDEA. WHEN IT LOCKS UP, IT DOESN'T SPOOL OUT ANY
7 MORE, IT DOESN'T TURN ANY MORE. THE BELT THEN -- YOU FLY INTO
8 THE BELT AND THE BELT HOLDS YOU BACK. THAT'S THE IDEA.

9 WHEN THAT HAPPENS, THERE TYPICALLY IS GOING TO BE A
10 LOT OF FORCE GENERATED BETWEEN THE BELT WEBBING AND THE D-RING,
11 BECAUSE THAT'S AN ANCHOR POINT, SO TO SPEAK, AND ALSO SOME
12 FORCE GENERATED AT THE LATCH PLATE AT YOUR BUCKLE AS YOUR LOWER
13 TORSO TRIES TO GO FORWARD.

14 SO THAT FORCE GENERATES HEAT AND FRICTION AND
15 OFTENTIMES WILL LEAVE EVIDENCE BEHIND, FORENSIC EVIDENCE, ON
16 THE WEBBING AND ON THE D-RING, PERHAPS, AND THE SAME THING ON
17 THE LATCH PLATE. AND LOOKING AT THOSE COMPONENTS WILL GIVE US
18 SOME INSIGHT AS TO, NUMBER ONE, WAS THE BELT WORN? BECAUSE IF
19 IT WASN'T, THERE WOULDN'T BE ANY LOADING THERE. IF THERE IS
20 LOADING OR ABRASIONS OR BURN MARKS AND EVIDENCE LEFT BEHIND
21 THERE, THEN THAT TELLS US THE BELT WAS WORN AND THERE WAS SOME
22 LOAD TRANSFER THERE.

23 AND IN THIS CASE WHAT WE FIND IS, AS THAT PICTURE
24 DEMONSTRATES, ARE QUITE HEAVY BURN MARKS ACROSS THE D-RING FROM
25 THE WEBBING. SO LITERALLY WHAT HAPPENS IS, AS WE DRAG AND AS

1 THE BELT MOVES OR TRIES TO MOVE ACROSS THAT D-RING, THE HEAT
2 AND FRICTION LITERALLY MELT THE PLASTIC OF THE D-RING AND IT
3 MELTS THAT PLASTIC AND WHAT WE WILL SEE IS IT ACTUALLY MELTS IT
4 ONTO THE WEBBING OF THE BELT AS WELL.

5 SO IN THIS EXAMPLE, THIS WOULD BE BLACK. WE WOULD
6 SEE PERHAPS SOME BLACK TRANSFER HERE, WHICH IS NOT UNUSUAL, BUT
7 THAT IS A DATAPOINT THAT ALLOWS US TO DETERMINE HOW THE BELT
8 PERFORMED IN THIS ACCIDENT, HOW IT WAS WORN AT THE BEGINNING,
9 WHEN IT LOCKED UP, THINGS OF THAT NATURE, WHETHER OR NOT IT
10 STAYED LOCKED.

11 Q. AND WAS MICAH ANDREWS' SEATBELT BEING WORN?

12 A. ABSOLUTELY.

13 Q. THERE IS NO DISPUTE ABOUT THAT IN THIS CASE, CORRECT?

14 A. NO DOUBT.

15 Q. THAT HE WAS WEARING IT CORRECTLY AS WELL?

16 A. CORRECT.

17 Q. OKAY. HOW ABOUT THIS PICTURE, CAN YOU TELL US WHAT YOU
18 DREW FROM THIS PICTURE?

19 A. SO THIS IS MICAH'S LATCH PLATE AND WE SEE SIMILAR
20 ABRASIONS HERE AND HERE IN THE SLOT FROM THAT BELT, FROM THAT
21 BELT BEING LOADED AGAINST THE LATCH PLATE AND MELTING AND
22 BURNING THAT PLASTIC.

23 Q. AND SO THE SAME THING IS HAPPENING, IT'S JUST SLIDING
24 THROUGH SO HARD AND SO FAST THAT IT'S ACTUALLY MELTING PLASTIC?

25 A. CORRECT.

1 Q. OKAY. CAN YOU TELL US WHAT WE SEE IN THIS PICTURE?

2 A. ONE OF THE THINGS THAT I DID IS LOOKED AT THE WEBBING
3 ITSELF. SO WHEN YOU LOOK AT THE WEBBING ITSELF, PARTICULARLY
4 IN MICAH'S CASE, THERE IS A LARGE PLASTIC TRANSFER. MICAH'S
5 D-RING WAS WHITE, REMEMBER, AND THAT TRANSFER GOES FROM ABOUT
6 66 INCHES ALL THE WAY TO 86 OR REALLY ABOUT 66 AND A HALF TO 86
7 AND A HALF.

8 BUT THIS LARGE TRANSFER HERE, THIS WHITE, THAT'S
9 WHITE PLASTIC FROM THE D-RING. SO THAT IS THAT WHITE PLASTIC
10 FROM THE D-RING THAT'S BEING MELTED ONTO THE WEBBING AND LEFT
11 BEHIND.

12 THE NOTEWORTHY THING HERE IS THAT'S 20 INCHES LONG,
13 WHICH TELLS ME AND TELLS US THAT THE BELT LOCKED UP AND THEN
14 WAS PULLED ACROSS THAT D-RING FOR 20 INCHES. AND AS IT DID
15 THAT, OBVIOUSLY THE BELT IS GETTING LONGER BY THAT 20 INCHES
16 AND MICAH IS ALLOWED TO GO FORWARD OR MOVE FORWARD AS THAT'S
17 HAPPENING, ULTIMATELY IMPACTING THE STEERING WHEEL.

18 Q. SO THAT'S ACTUALLY PHYSICAL EVIDENCE OF 20 INCHES OF BELT
19 SPOOL-OUT FOR MR. ANDREWS?

20 A. CORRECT. AND THAT HAPPENS AFTER THE BELT LOCKS UP AND
21 THERE'S AN EXPLANATION FOR THAT THAT WE WILL TALK ABOUT IN A
22 MINUTE.

23 Q. OKAY. I WANT TO TAKE ONE MOMENT TO TALK ABOUT, TO GO
24 BACKWARDS AND LOOK AT THESE PHOTOS OF THE STEERING WHEEL.

25 THE AIRBAG DID NOT DEPLOY IN THE COLLISION, CORRECT?

1 A. THE AIRBAG DID NOT DEPLOY, NO.

2 Q. HAVE YOU EVER SEEN A COLLISION BEFORE WHERE AN AIRBAG WAS
3 SUPPOSED TO DEPLOY BUT DIDN'T?

4 A. YES.

5 Q. WHAT IS MORE COMPLICATED, AN AIRBAG OR A SEATBELT? JUST
6 FROM A DESIGN PERSPECTIVE.

7 A. THE AIRBAG IS MORE COMPLICATED.

8 Q. AND WHICH ONE RELIES ON A COMPUTER TO WORK?

9 A. THE AIRBAG. THE SEATBELTS TYPICALLY ARE MECHANICAL
10 DEVICES.

11 Q. SO WHICH ONE OF THE TWO REQUIRES ELECTRONICS AND WIRES AND
12 COMPUTER ALGORITHMS IN ORDER TO FUNCTION PROPERLY?

13 A. THOSE ARE TYPICALLY THE AIRBAG.

14 Q. AND SOMETIMES AIRBAGS FAIL, CORRECT?

15 A. OF COURSE.

16 Q. WHEN I ASKED YOU THAT QUESTION, YOU WERE KIND OF LIKE,
17 YES, OF COURSE I'VE SEEN AIRBAGS FAIL.

18 A. OF COURSE, YES.

19 Q. SO SEATBELTS DON'T NEED ANY FANCY TECHNOLOGY TO HOLD YOU
20 BACK IN YOUR SEAT AND -- IS THAT RIGHT?

21 A. THAT'S CORRECT. NO, THIS IS A SIMPLE MECHANICAL DEVICE.
22 THERE IS A LITTLE BALL BEARING IN HERE THAT PUSHES THE LOCK BAR
23 UP INTO A SPROCKET. IT'S THAT SIMPLE. IT'S ALMOST LIKE
24 STICKING A STICK INTO YOUR BICYCLE SPOKES. THAT'S KIND OF HOW
25 THIS WORKS. IT'S VERY BASIC AND VERY SIMPLE AND CONSEQUENTLY

1 VERY RELIABLE.

2 Q. AND WOULD AUTOLIV, A COMPANY THAT MANUFACTURES BOTH
3 AIRBAGS AND SEATBELTS, BE AWARE THAT SOMETIMES AIRBAGS FAIL?

4 A. OF COURSE.

5 Q. OKAY. YOU ALSO HAVE TESTIFIED BEFORE THAT THE SEATBELT
6 PRETENSIONER DID NOT FIRE. LET'S SEE IF I CAN FIND THAT PHOTO
7 HERE FOR YOU SO YOU CAN EXPLAIN TO THE COURT WHAT A
8 PRETENSIONER IS, PLEASE.

9 A. CORRECT. IN THIS VEHICLE, THERE IS A DEVICE CALLED A
10 PRETENSIONER AND THAT IS INTENDED TO FIRE EARLY WITH THE
11 AIRBAG, TYPICALLY, EARLY MEANING BEFORE WE START TO MOVE.

12 Q. CAN YOU USE THIS PHOTO TO EXPLAIN WHERE THE PRETENSIONER
13 IS?

14 A. YEAH. SO THE PRETENSIONER IN THIS VEHICLE IS IN THE
15 BUCKLE, WHICH IS HERE. SO THAT BUCKLE IS ATTACHED TO THIS
16 PIECE OF ACCORDION HERE, THAT LITTLE PLASTIC SLEEVE, AND WHAT
17 REALLY HAPPENS IS THERE IS A CABLE IN THERE THAT GOES AROUND A
18 PULLEY AND IT GOES INTO THIS TUBE RIGHT HERE. AND SO WHAT
19 HAPPENS IS WHEN THE PRETENSIONER FIRES, THAT BUCKLE IS
20 LITERALLY PULLED DOWN TOWARDS THE FLOOR. AND THE EXPECTATION
21 OF OR THE HOPE IS IS THAT THAT PULLS DOWN TO THE FLOOR EARLY,
22 BEFORE WE START TO MOVE RELATIVE TO THE CRASH, SO THAT IF THERE
23 IS LOOSENESS IN THE BELT, IT SNUGS IT UP BEFORE WE GET THERE.
24 AND THAT'S THE IDEA.

25 Q. AND HOW MUCH BELT SLACK IS A PRETENSIONER OR WAS MICAH

1 ANDREWS' PRETENSIONER DESIGNED TO TAKE OUT OF THE SYSTEM?

2 A. THE STROKE FOR THIS ONE WOULD HAVE BEEN UP TO ABOUT THREE
3 INCHES.

4 Q. SO WE ARE NOT TALKING ABOUT PULLING IN 20 INCHES OF
5 SPOOL-OUT?

6 A. NO, NO, NO.

7 Q. AND A PRETENSIONER, IS THAT DESIGNED IN ORDER, IN ORDER TO
8 AVOID A SITUATION WHERE SOMEBODY HAS GOT THE SEATBELT A LITTLE
9 LOOSE WHEN THEY ARE DRIVING AROUND?

10 A. YES. AND IT'S DESCRIBED THAT IF YOU ARE WEARING HEAVY
11 COATS OR, YOU KNOW, IF IT'S WINTER AND YOU ARE WEARING A BULKY
12 COAT OR SOMETHING AND THE BELT IS ROUTED OVER YOUR CLOTHING,
13 THEN SOMETIMES THAT CAN CREATE A BIT OF A LOOSENESS THAT THE
14 PRETENSIONER WOULD BE DESIGNED TO BE ABLE TO TAKE OUT. IT'S
15 NOT GOING TO PULL YOU BACK INTO THE SEAT PER SE. IT'S NOT
16 GOING TO DO THAT. BUT IT WILL SNUG IT UP.

17 THE COURT: WHAT, IF ANY, EFFECT DOES THE SIZE OF THE
18 PERSON PLAY IN THIS?

19 THE WITNESS: FOR THE PRETENSIONER NOT A WHOLE LOT,
20 BECAUSE THEY ARE NOT -- THEY ARE PURPOSEFULLY NOT THAT STRONG.
21 SO THEY WILL -- AND I HAVE FIRED THEM ON MYSELF. YOU WILL FEEL
22 IT, BUT WE DON'T WANT IT TO HURT PEOPLE. SO IT'S NOT GOING TO
23 BE THAT STRONG.

24 SO IF YOU HAD A LOT OF SOFT TISSUE, IF YOU WERE A
25 BIGGER PERSON WITH A LOT OF SOFT TISSUE AROUND THE BELT

1 ROUTING, IT MIGHT SNUG UP ON THAT A LITTLE MORE THAN IT WOULD
2 ON A THIN PERSON THAT DIDN'T HAVE A LOT OF THAT SOFT TISSUE.

3 WHAT THE BELT IS REALLY TRYING TO DO IS GRAB ON TO
4 YOUR SKELETAL SYSTEM. SO AS IT SNUGS DOWN THAT SOFT TISSUE MAY
5 COMPRESS A LITTLE BIT, WHICH IS REALLY WHAT'S GOING TO HAPPEN
6 WITH THE BULKY CLOTHING, FOR EXAMPLE. IT WILL COMPRESS THAT
7 WINTER COAT.

8 THE COURT: THANK YOU.

9 BY MS. CANNELLA:

10 Q. SO IN YOUR OPINION HAD THE PRETENSIONER FIRED, WOULD THERE
11 HAVE BEEN A SIGNIFICANT DIFFERENCE IN THE AMOUNT OF BELT
12 SPOOL-OUT OR IN MR. ANDREWS' FORWARD MOTION IN THIS COLLISION?

13 A. IT WOULDN'T HAVE AFFECTED THE SPOOL-OUT AT ALL. IT WOULD
14 HAVE AFFECTED, PERHAPS, TO A SMALL DEGREE THE AMOUNT OF FORWARD
15 EXCURSION.

16 Q. BUT NOTHING SIGNIFICANT?

17 A. NO, CERTAINLY NOT WITH RESPECT TO HIS UPPER TORSO. THAT
18 PRETENSIONER IS ON THE BUCKLE SIDE, WHICH IS GOING TO TIGHTEN
19 BOTH THE LAP BELT AND THE SHOULDER BELT TOGETHER, BECAUSE IT'S
20 PULLING THAT LATCH PLATE DOWN. SO ENVISION IF YOU PULL THE
21 LATCH PLATE DOWN, YOU ARE GOING TO PULL BOTH, BOTH SEGMENTS OF
22 BELT TIGHTER, WHICH MEANS THAT YOU KIND OF SPLIT THE
23 DIFFERENCE. SO IF I PULL IT DOWN, I AM NOT GOING TO GET THAT
24 FULL BENEFIT IN ONE OR THE OTHER. YOU ARE GOING TO SHARE THAT
25 BENEFIT. BUT THE UPPER TORSO, THAT 20 INCHES IS NOT GOING TO

1 BE AFFECTED.

2 Q. THANK YOU.

3 BEFORE OR SINCE YOU INSPECTED MR. ANDREWS' CAR, HAVE
4 YOU EVER SEEN A SEATBELT WITH 20 INCHES OF SPOOL-OUT OR MORE?

5 A. ONLY ON ONE OR TWO OCCASIONS THAT I RECALL.

6 Q. IN YOUR WHOLE CAREER SPANNING 30 YEARS AND THOUSANDS OF
7 INVESTIGATIONS, YOU HAVE ONLY SEEN THIS HAPPEN TWICE, CORRECT?
8 OR A FEW TIMES? TWO? ONE, TWO, SOMETHING LIKE THAT?

9 A. MAYBE THREE.

10 Q. MAYBE THREE, OKAY.

11 A. BUT NOT, NOT VERY. IT'S VERY -- IT'S RARE.

12 Q. HAVE YOU EVER SEEN 20 INCHES OF SPOOL-OUT IN THE DRIVER'S
13 SEAT OF ANY OTHER CAR?

14 A. THERE'S ONLY ONE POSSIBILITY THAT COMES TO MIND. I RECALL
15 ONE OTHER CASE WHERE IT MAY HAVE BEEN CLOSE TO THAT, BUT I
16 DON'T RECALL THE NUMBER. TWENTY IS PRETTY SIGNIFICANT.

17 Q. IS IT AN EXTREME OUTLIER IN YOUR EXPERIENCE?

18 A. YES, ABSOLUTELY.

19 Q. IS THERE ANYTHING THAT LIMITS THE AMOUNT OF WEBBING THAT
20 CAN SPOOL OUT IN A CRASH WITH THIS SEATBELT?

21 A. NO. WELL, NO, NOT REALLY.

22 Q. THEORETICALLY, IF THERE WAS NOTHING IN FRONT OF THE PERSON
23 WEARING THE SEATBELT, THEY WOULD KEEP GOING UNTIL THE SEATBELT
24 JUST SPOOLED COMPLETELY OUT; IS THAT RIGHT?

25 A. YES. BUT IT MIGHT BE USEFUL TO -- IF I CAN POINT OUT WHY

1 IT SPOOLED OUT?

2 Q. OKAY. WELL, LET'S DO THAT, THEN.

3 A. OKAY.

4 Q. OKAY. BEFORE WE TALK ABOUT THE SPECIFIC MICAH ANDREWS

5 SEATBELT, I WANT TO TALK TO YOU, LIKE YOU SAID, ABOUT HOW

6 TORSION BARS WORK AND THAT KIND OF THING.

7 A. SURE.

8 Q. WHEN YOU INSPECTED THE SEATBELT IN MICAH ANDREWS' CAR,

9 WHAT PART OF THE SEATBELT DO YOU IMMEDIATELY FOCUS ON THAT'S

10 CAUSING THE PROBLEM?

11 A. THAT LONG MARK. SO THE MARK ON THE BELT WEBBING TELLS ME

12 THAT THE BELT, FIRST OF ALL, LOCKED UP. IN OTHER WORDS, THE

13 RETRACTOR, THE SPOOL WAS TRYING NOT TO SPIN. BUT IN THAT -- IN

14 THE FACE OF THAT, IT STILL ALLOWED THE SHOULDER BELT TO SPOOL

15 OUT THAT 20 INCHES. AND THAT'S WHY WE GOT THAT HEAVY MARK.

16 SO WHAT BECAME IMMEDIATELY OBVIOUS IS THAT THE BELT,

17 FIRST OF ALL, MOVED ACROSS THAT D-RING 20 INCHES, WHICH MEANS

18 THE SHOULDER BELT WAS MOVING AND ALLOWING MICAH'S UPPER TORSO

19 TO MOVE FORWARD THAT FAR, WHICH IS QUITE FAR. AND RECOGNIZING

20 AND UNDERSTANDING HOW THE RETRACTOR WORKS AND WHAT'S IN THERE,

21 THE ANSWER BECAME QUITE CLEAR AND VERY OBVIOUS. SO THERE IS A

22 DEVICE IN THERE THAT ALLOWED THAT TO HAPPEN AND THAT'S --

23 Q. AND WHAT IS THAT CALLED?

24 A. -- PRESUMABLY WHAT WE WILL TALK ABOUT. SO --

25 Q. I AM GOING TO -- MAYBE THIS WILL BE HELPFUL, MR. MEYER.

1 A. SO THIS, THE RETRACTOR HAS A DEVICE TO LOCK IT UP. IT
2 ALSO HAS A DEVICE THAT'S REFERRED TO AS A LOAD LIMITER AND THE
3 LOAD LIMITER --

4 THE COURT: A WHAT?

5 THE WITNESS: LOAD LIMITER, LOAD MEANING LIKE FORCE
6 OR TENSION.

7 SO AS THE CAR STOPS, WE START TO FLY FORWARD. THE
8 SEATBELT LOCKS UP. WE ENGAGE THE BELT. YOU CAN ENVISION THAT
9 THEN THERE BECOMES A FORCE BETWEEN THE BELT AND OUR CHEST, OUR
10 UPPER TORSO, AND WE ARE PULLING ON THE BELT.

11 THERE IS A DEVICE IN HERE REFERRED TO AS A LOAD
12 LIMITER AND ITS PURPOSE IS TO LIMIT THE AMOUNT OF FORCE THAT
13 THE BELT CAN PUT ON MY CHEST. THE WAY IT DOES THAT IS THAT
14 THAT LOAD LIMITER IS REFERRED TO IN THIS CASE AS A TORSION BAR.
15 SO THE SPOOL HAS A SHAFT THROUGH THE MIDDLE OF IT, AN AXLE, IF
16 YOU WILL.

17 ON THE END OF THE SPOOL IS THE LOCKING TEETH THAT THE
18 LOCKUP DEVICE GRABS ONTO TO STOP THE SPOOL FROM SPINNING. BUT
19 THAT'S REALLY ONLY ON ONE SIDE. SO THE SHAFT IS THROUGH THE
20 MIDDLE. I AM GOING TO HOLD ONTO ONE SIDE OF THAT SPOOL.

21 THE WAY THE LOAD LIMITER WORKS IS IF I PULL ON THAT
22 SHAFT HARD ENOUGH, I CAN LITERALLY, IF I PULL ON THAT SPOOL
23 HARD ENOUGH OR PULL ON THAT BELT, I CAN LITERALLY TWIST THE
24 SHAFT. I CAN JUST BEND IT. AND AS ENGINEERS, WE CAN CONTROL
25 THAT. WE CAN MAKE THAT SHAFT OUT OF DIFFERENT MATERIALS. WE

1 CAN MAKE IT DIFFERENT DIAMETERS. WE CAN MAKE IT HOWEVER STRONG
2 TO RESIST HOWEVER MUCH OF THAT TWIST WE WANT TO.

3 AND SO THAT IS THE LOAD LIMITER AND IT'S DESIGNED SO
4 THAT IF I PULL ON IT ABOVE THE THRESHOLD, IT WILL BEGIN TO
5 TWIST, AND SO WE CAN MAKE THAT WHATEVER WE WANT.

6 TYPICALLY THAT'S MEASURED IN UNITS OF FORCE.
7 TYPICALLY WE USE KILONEWTONS FOR REASONS THAT ARE INCONVENIENT
8 TO US. WE WANT TO THINK OF IT AS POUNDS. BUT IT'S A SIMPLE
9 CONVERSION.

10 SO THIS TORSION BAR HAD A PARTICULAR LIMIT TO IT.
11 AND SO WHAT HAPPENS IS, AND HERE'S A PICTURE OF THE TORSION
12 BAR, SO THE TORSION BAR IS THIS AXLE THAT GOES RIGHT IN HERE,
13 RIGHT THROUGH THE MIDDLE OF THE SPOOL. AND IF WE TAKE IT OUT,
14 IT LOOKS LIKE THAT. OKAY?

15 BY MS. CANNELLA:

16 Q. SO IN THIS VIDEO THE TORSION BAR WOULD NORMALLY BE WHERE
17 YOU PUT THAT YELLOW LINE, BUT FOR ILLUSTRATIVE PURPOSES IT'S
18 BEEN PULLED OUT, CORRECT?

19 A. RIGHT.

20 Q. OKAY.

21 A. NOW, IF YOU PLAY THE VIDEO, THE RETRACTOR LOCKS UP AND
22 HOLDS THE SPOOL. BUT AS YOU PULL THE BELT, IF YOU PULL ABOVE
23 THAT THRESHOLD, YOU LITERALLY TWIST THAT SHAFT.

24 Q. SO IT'S GOING TO PLAY AGAIN. AND THOSE RED LINES THERE
25 SHOW HOW IT'S ACTUALLY TWISTING THE METAL, CORRECT?

1 A. RIGHT, RIGHT. SO IT LITERALLY JUST TWISTS THE SHAFT. AND
2 THAT'S WHY WE CALL IT A TORSION BAR BECAUSE IT'S TORQUING, IF
3 YOU WILL.

4 SO THAT TORSION BAR TWISTS AND THAT ALLOWS THE SPOOL
5 TO TURN EVEN THOUGH IT'S LOCKED. AS THE SPOOL TURNS, THE BELT
6 IS SPOOLED OUT AND CORRESPONDINGLY THE OCCUPANT GOES FORWARD.

7 AND YOUR QUESTION ABOUT WHETHER OR NOT THERE IS ANY
8 LIMIT TO THAT IS THAT IN THIS BELT, AS LONG AS THAT FORCE IS
9 ABOVE THAT THRESHOLD, THIS RETRACTOR WILL GO UNTIL YOU RUN OUT
10 OF BELT. THERE IS NO OTHER DEVICE TO STOP IT.

11 Q. OKAY. AND I AM GOING TO GO BACK TO YOUR --

12 THE COURT: HOLD ON; HOLD ON; HOLD ON.

13 MS. CANNELLA: OH, I'M SORRY.

14 THE COURT: WHAT DETERMINES HOW MUCH FORCE THIS
15 TORSION BAR TAKES BEFORE IT ALLOWS IT TO GIVE?

16 THE WITNESS: THAT'S A FUNCTION OF -- THE ENGINEERS
17 DECIDE THAT. SO WE CAN MAKE THAT WHATEVER WE WANT.

18 THE COURT: IS THERE AN INDUSTRY STANDARD THAT
19 DECIDES THAT?

20 THE WITNESS: GENERALLY SPEAKING, THE MOST COMMON IS
21 ABOUT FOUR KILONEWTONS. FOUR KILONEWTONS IS ABOUT 900 POUNDS.
22 SO ABOUT 900 POUNDS IS THE MOST COMMON.

23 THERE IS ALSO A NUMBER OF THEM THAT ARE SIX
24 KILONEWTONS, WHICH IS ABOUT 1300 POUNDS, MEANING THAT IF I PULL
25 ON IT FOR 900 -- IF IT'S A SIX-KILONEWTON TORSION BAR, I PULL

1 ON IT FOR 900 POUNDS. ONCE THERE IS 900 POUNDS OF FORCE
2 BETWEEN THE BELT AND MY CHEST, THEN IT'S GOING TO START TO TURN
3 AND SPIN.

4 NOW, IF THE CRASH IS OVER AND I BACK OFF OF IT, THEN
5 IT DOESN'T GO ANY MORE. BUT AS LONG AS I CONTINUE TO EXCEED
6 THAT THRESHOLD IT WILL ALLOW ME TO GO FORWARD AND IT WILL SPOOL
7 OUT.

8 IN THIS PARTICULAR RETRACTOR THAT TORSION BAR WAS SET
9 AT TWO KILONEWTONS, TWO, WHICH IS ONLY ABOUT 450 POUNDS. AND
10 OBVIOUSLY THE STRONGER IT IS, THE HARDER IT IS TO SPOOL THAT
11 BELT OUT, THE LESS FORWARD YOU ARE ALLOWED TO MOVE. THE WEAKER
12 IT IS, THE FURTHER YOU GO AND THE MORE AGGRESSIVELY YOU GET
13 THERE.

14 THE COURT: THANK YOU.

15 MS. CANNELLA: THANK YOU.

16 BY MS. CANNELLA:

17 Q. OKAY. THE SLIDE THAT'S UP NOW, CAN YOU TELL US WHAT THIS
18 IS?

19 A. YES. SO I QUANTIFIED OR WANTED TO SATISFY MYSELF THAT THE
20 SPOOL-OUT AMOUNT WAS CORRECT IN TWO WAYS: ONE, AND THE EASY
21 AND OBVIOUS WAY, WAS TO LOOK AT THAT BURN MARK ON THE BELT AND
22 THAT WAS 20 INCHES LONG.

23 I ALSO THEN TOOK THE RETRACTOR APART AND TOOK THAT
24 TORSION BAR OUT OF THE MIDDLE OF MR. ANDREWS' RETRACTOR AND
25 THIS IS A PICTURE OF THAT. AND YOU CAN SEE THESE ANGLES HERE.

1 YOU CAN SEE HOW THE METAL IS TWISTED AND THAT'S WHAT WE ARE
2 SEEING HERE. SO IT LOOKS LIKE A BARBER SHOP, YOU KNOW, POLE.
3 IT'S LITERALLY -- OR A CANDY CANE. YOU CAN SEE THOSE ANGLE
4 MARKS BECAUSE THE METAL ITSELF IS TWISTED. IF YOU LOOK AT ONE
5 THAT HADN'T BEEN TWISTED, THAT'S NOT THERE AT ALL.

6 SO WE CAN MEASURE THE ANGLE OF THAT TWIST AND DO SOME
7 CALCULATIONS. AND IN GENERAL THE CALCULATIONS BASED UPON THAT
8 ANGLE TELL ME ABOUT 21 INCHES OF BELT. THREE AND A HALF TURNS.
9 Q. SO THE IDEA IS IF YOU STRENGTHEN THE TORSION BAR, YOU CAN
10 REDUCE THE NUMBER OF TURNS?

11 A. YES.

12 Q. ALL THINGS BEING EQUAL?

13 A. CORRECT.

14 Q. LET ME ASK YOU SOMETHING.

15 ARE THERE ANY FEDERAL REGULATIONS THAT DEAL WITH HOW
16 MUCH SPOOL-OUT IS ALLOWED IN A SEATBELT LIKE THIS?

17 A. NOT REALLY.

18 Q. THERE ARE FEDERAL REGULATIONS THAT GOVERN SEATBELTS,
19 THOUGH, CORRECT?

20 A. YES. BUT THERE'S -- THAT'S NOT REALLY THE APPROACH THAT
21 THEY HAVE TAKEN, SO --

22 Q. ARE THEY -- I'M SORRY. ARE THEY MINIMUM STANDARDS OR
23 MAXIMUM STANDARDS?

24 A. YES. THERE ARE FEDERAL MOTOR VEHICLE SAFETY STANDARDS.
25 THEY ARE PART OF THE FEDERAL REGISTER. AND THE INTRO TO THE

1 REGISTER, THE PREAMBLE, IF YOU WILL, OR WHATEVER THAT IS
2 CALLED, STATES SPECIFICALLY THAT THEY ARE IN FACT MINIMUM
3 SAFETY STANDARDS. THEY ARE MINIMUM STANDARDS THAT YOU ARE
4 REQUIRED TO MEET TO SELL THE CAR LEGALLY IN THIS COUNTRY, BUT
5 THEY DO NOT ADDRESS THIS ISSUE PER SE.

6 Q. AND THERE IS NO MINIMUM, IN FACT, THAT YOU CAN BUILD A
7 SEATBELT WHERE THE SEATBELT SPOOLS OUT ALL THE WAY IN A CRASH
8 AND THAT CAN STILL BE AT A, QUOTE-UNQUOTE, PASS ON THE MINIMUM
9 STANDARD?

10 A. YES. WHAT IT SAYS, FOR EXAMPLE, IS IT SAYS THAT THAT
11 SPROCKET HAS TO LOCK UP AT A CERTAIN ACCELERATION LEVEL.
12 BEFORE .7 G'S OF ACCELERATION, IT HAS TO LOCK UP. THIS, OF
13 COURSE, DOES THAT. IT LOCKS UP. THAT'S THE STICKING THE STICK
14 IN THE SPOKE KIND OF IDEA. IT HAS TO LOCK UP QUICKLY AND AT A
15 REASONABLY LOW THRESHOLD AND IT DOES THAT. BUT ONCE IT'S
16 LOCKED THERE ISN'T A STANDARD THAT DIRECTLY DEALS WITH THE --
17 HOW MUCH BELT IS ALLOWED TO COME OUT.

18 Q. AND I AM GOING TO FORWARD PAST YOUR DRAWINGS HERE, BECAUSE
19 I THINK -- I DON'T THINK YOU NEED THEM.

20 A. TRUE.

21 Q. BUT LET ME JUST ASK YOU KIND OF A BASIC QUESTION FIRST.

22 THE POINT OF A SEATBELT IS TO KEEP YOU FROM HITTING
23 THINGS IN THE CAR SO HARD YOU GET A SERIOUS INJURY OR GET
24 KILLED, CORRECT?

25 A. ABSOLUTELY.

1 Q. DID THIS SEATBELT DO THIS FOR MR. ANDREWS?

2 A. NO.

3 Q. IN YOUR PROFESSIONAL OPINION IS THE SEATBELT DESIGN
4 DEFECTIVE?

5 A. YES, ABSOLUTELY.

6 Q. DURING YOUR 30-YEAR CAREER WHAT IS THE RANGE OF STRENGTHS
7 THAT YOU HAVE SEEN IN THE TORSION BAR?

8 A. IN THE TORSION BAR? THIS IS THE LOWEST I HAVE EVER SEEN.
9 TYPICALLY, AS I SAY, THEY ARE FOUR TO SIX KILONEWTONS. I HAVE
10 NEVER SEEN ONE AT TWO OTHER THAN THIS CASE.

11 THE COURT: THIS IS THE FIRST TIME EVER?

12 THE WITNESS: FIRST TIME.

13 BY MS. CANNELLA:

14 Q. DO YOU AGREE THAT THE SEATBELT IS THE PRIMARY LIFESAVING
15 DEVICE IN A CAR?

16 A. ABSOLUTELY.

17 Q. I AM GOING TO GIVE YOU WHAT I HAVE MARKED AS PLAINTIFF'S
18 HEARING EXHIBIT 1.

19 CAN YOU PLEASE IDENTIFY THAT FOR THE COURT?

20 A. THIS IS A PORTION OF AUTOLIV'S WEBSITE.

21 THE COURT: CAN WE CALL THIS EXHIBIT 3?

22 MR. SCRIBNER: NO OBJECTION, YOUR HONOR.

23 THE COURT: ALL RIGHT. IT'S ADMITTED WITHOUT
24 OBJECTION, EXHIBIT 3.

25 MS. CANNELLA: I BELIEVE IT'S EXHIBIT NUMBER 1; IS

1 THAT RIGHT?

2 THE COURT: I THOUGHT EXHIBIT -- I THOUGHT EXHIBIT 1
3 WAS SOMETHING ELSE.

4 MS. CANNELLA: I'M SORRY, YOUR HONOR. IT'S
5 PLAINTIFF'S EXHIBIT, HEARING EXHIBIT 1.

6 THE COURT: OH, OKAY.

7 MS. CANNELLA: I BELIEVE THE AUTOPSY PHOTO WAS
8 EXHIBIT 2, PLAINTIFF'S HEARING EXHIBIT 2. OKAY.

9 BY MS. CANNELLA:

10 Q. BASED ON THIS WEBSITE IS IT TRUE THAT EVEN AUTOLIV AGREES
11 THAT THE SEATBELT IS A PRIMARY LIFESAVING DEVICE, THE NUMBER
12 ONE LIFESAVER?

13 A. YES. IT'S CLEARLY STATED AS SUCH.

14 Q. AND THE WHOLE JOB OF IT IS TO KEEP YOU FROM SMASHING INTO
15 THINGS, CORRECT?

16 A. YES. THAT'S ITS PURPOSE IN LIFE.

17 Q. I AM GOING TO SHOW YOU A PHOTO THAT WE HAVE BLOWN UP. CAN
18 YOU SEE THAT OKAY?

19 A. YES.

20 Q. SORRY ABOUT THAT.

21 OKAY. THIS IS A PHOTOGRAPH OF MICAH ANDREWS'
22 SEATBELT, CORRECT?

23 A. THAT'S THE STEERING WHEEL.

24 Q. I'M SORRY. STEERING WHEEL. THANK YOU.

25 AND WHAT ARE THOSE LETTERS ON THE STEERING WHEEL?

1 A. SRS AIRBAG IS WHAT IT SAYS.

2 Q. OKAY. AND WHAT DOES SRS STAND FOR?

3 A. SUPPLEMENTAL RESTRAINT SYSTEM.

4 Q. WHAT IS THE AIRBAG SUPPLEMENTING?

5 A. THE SEATBELT. THE SEATBELT IS THE PRIMARY RESTRAINT

6 SYSTEM. THE AIRBAG IS CONSIDERED SUPPLEMENTING THAT.

7 Q. AND YOU DID A SURROGATE STUDY TO DETERMINE WHETHER THE

8 SEATBELT, THE AUTOLIV SEATBELT, SERVED ITS PURPOSE OF BEING

9 MICAH ANDREWS' PRIMARY RESTRAINT, CORRECT?

10 A. YES.

11 Q. AND WHAT DID YOU CONCLUDE ABOUT THE SEATBELT AS A RESULT

12 OF THAT STUDY?

13 A. THAT WITH THAT AMOUNT OF SPOOL-OUT AND PAY-OUT THAT HE WAS

14 ALLOWED TO MOVE FORWARD AND SLAM INTO THE STEERING WHEEL

15 SUFFICIENTLY TO KILL HIM.

16 Q. OKAY. AND ON THE SLIDES WE HAVE PICTURES FROM A COUPLE OF

17 SURROGATE STUDIES?

18 A. YES.

19 Q. CAN YOU TELL US WHAT WE SEE IN THIS PHOTO?

20 A. YES. THIS IS MY SURROGATE. SO WHAT WE DO HERE IS WE GET

21 AN EXEMPLAR VEHICLE, ONE THAT'S THE SAME MAKE AND MODEL THAT

22 HAD NOT BEEN IN A COLLISION, AND WE GET A SURROGATE OCCUPANT,

23 SOMEONE OF SIMILAR STATURE TO THE OCCUPANT IN QUESTION, AND WE

24 PUT THE SEAT IN THE SAME POSITION AND PUT THE BELT ON AND THEN

25 I TAKE MEASUREMENTS AND IT ALLOWS ME TO DECIDE OR DETERMINE

1 WHETHER OR NOT THE MARKS THAT WE FOUND REASONABLY MATCH WHERE
2 WE WOULD EXPECT THEM TO BE IF EVERYTHING WAS APPROPRIATE.

3 AND WHAT THAT TELLS ME FIRST OF ALL IS IT TELLS ME
4 THAT THAT 20-INCH MARK BEGAN WHERE WE WOULD EXPECT IT TO. IN
5 OTHER WORDS, THAT FOR SOMEONE OF MR. ANDREW'S STATURE IN THAT
6 VEHICLE, THE D-RING WOULD HAVE BEEN LOCATED AT ABOUT 66 INCHES
7 WHERE THAT MARK STARTED. AND THAT TELLS ME THAT HE WAS WEARING
8 IT PROPERLY OVER HIS SHOULDER, SEATED REASONABLY NORMALLY, AND
9 THAT THAT'S WHERE THE SPOOL-OUT BEGAN.

10 THEN, SECONDLY, WHAT WE CAN DO AND WHAT I HAVE DONE
11 HERE IS TO SPOOL IT OUT TO THE END OF THAT MARK AND SAY, OKAY,
12 NOW WE CAN VISUALLY SEE HOW MUCH, WHAT DOES 20 INCHES LOOK LIKE
13 FOR SOMEONE SITTING IN THE VEHICLE, AND THAT'S WHAT THAT LOOKS
14 LIKE.

15 SO WHEN THE BELT IS SPOOLED OUT TO THE END OF THAT
16 MARK WITH THE D-RING AT 86 INCHES, WE SEE THAT THE BELT ITSELF
17 IS ALMOST AT THE --

18 Q. OKAY.

19 A. ALMOST AT THE STEERING WHEEL, WHICH MEANS IT CAN'T
20 POSSIBLY HOLD HIM BACK OR HOLD HIM OUT OF PLOWING INTO THE
21 FRONT OF THE STRUCTURE IN SPITE OF THE FACT THAT THERE IS NO
22 SIGNIFICANT INTRUSION THERE.

23 Q. OKAY. SO HE IS HOLDING THE SEATBELT OUT AS FAR AS IT WENT
24 FOR MR. ANDREWS, CORRECT?

25 A. YES.

1 Q. AND THIS PICTURE IS A DIFFERENT SURROGATE ABOUT

2 MR. ANDREWS' SIZE, CORRECT?

3 A. CORRECT.

4 Q. AND IT'S SHOWING HIM, HOW FAR HE WOULD BE ABLE TO GET

5 FORWARD WITH THE SEATBELT ON SPOOLED OUT THE SAME AMOUNT THAT

6 MR. ANDREWS' SEATBELT SPOOLED OUT IN OUR CRASH, CORRECT?

7 A. CORRECT. SO WHAT WE SEE IS THAT THE BELT IS NOT

8 PREVENTING HIM FROM GETTING AGGRESSIVELY INTO THE STEERING

9 WHEEL.

10 Q. WHAT IS THE ACTUAL PURPOSE OF HAVING A WEAK SEATBELT?

11 A. THE WEAK TORSION BAR'S PURPOSE IS TO IMPROVE THE STAR

12 RATING, THE STAR RATING SCORES THAT GO ON THE WINDOW STICKER

13 THAT ARE BASED UPON A FRONTAL IMPACT TEST, AN NCAP TEST.

14 Q. AN NCAP TEST. AND WHAT'S AN NCAP TEST?

15 A. NEW CAR ASSESSMENT PROGRAM IS WHAT THAT STANDS FOR.

16 Q. OKAY. AND SO THE STARS ARE BASED ON HOW THE CAR PERFORMS

17 IN THESE SPECIFIC CRASH TESTS THAT ARE RUN ACCORDING TO THE

18 SAME PROTOCOL ON ALL CARS?

19 A. YES, YES, AND THEY ARE FRONTAL IMPACTS INTO A BARRIER.

20 Q. SO LET'S TALK ABOUT THE AUTOLIV SEATBELT'S PERFORMANCE IN

21 CRASH TESTING, BUT FIRST LET ME ASK YOU THIS: IN THE AUTO

22 INDUSTRY, CARS ARE TESTED FOR SAFETY AT SPEEDS THAT SHOULD BE

23 SURVIVABLE, CORRECT?

24 A. YES. THE SYSTEMS ARE DESIGNED TO MAKE THEM SURVIVABLE AT

25 THOSE SPEEDS, YES, ABSOLUTELY.

1 Q. THE NCAP FRONTAL COLLISION IS RUN AT 35 MILES AN HOUR?

2 A. 35, YES.

3 Q. AND THAT WAS WHAT WE HAD IN THIS CASE, CORRECT?

4 A. YES.

5 Q. OKAY. MR. ANDREWS' COLLISION WAS A 35-MILE-AN-HOUR

6 FRONTAL IMPACT LIKE THE NCAP, CORRECT?

7 A. YES. THE RECONSTRUCTIONIST CHARACTERIZED IT AS VIRTUALLY

8 IDENTICAL OR VERY NEARLY. I THINK VIRTUALLY WAS HIS WORD, BUT

9 IT'S THE SAME SPEED.

10 Q. SO THE NCAP TEST HAS DUMMIES IN IT, CORRECT?

11 A. YES.

12 Q. AND THEY ARE INSTRUMENTED. CAN YOU EXPLAIN WHAT THAT

13 MEANS?

14 A. YES. THERE ARE SENSORS IN THEM TO MEASURE FORCES AT

15 VARIOUS LOCATIONS. AND THOSE FORCES, THEN, WE LOOK AT THOSE

16 FORCES AND COMPARE THEM TO DATA THAT WILL PREDICT THE

17 PROBABILITY OF AN INJURY AT THOSE FORCE LEVELS, WITH THE IDEA

18 BEING THAT THE SAFETY SYSTEMS ARE DESIGNED TO KEEP THOSE INJURY

19 LEVELS, THOSE FORCES DOWN BELOW THE LEVEL OF PRODUCING SERIOUS

20 OR FATAL INJURIES.

21 Q. SO THEY TAKE THE CAR, RUN IT UP TO 35 MILES AN HOUR AND

22 CRASH IT INTO A BARRIER?

23 A. CORRECT.

24 Q. AND WHAT IS A PRINCIPAL DIRECTION OF FORCE? WHAT DOES

25 THAT MEAN?

1 A. THAT REFERS TO BASICALLY THE ANGLE OF THE IMPACT. SO, FOR
2 EXAMPLE, IN A FRONTAL IMPACT, THE PRINCIPAL DIRECTION OF FORCE,
3 IF IT WAS PURELY FRONTAL INTO THAT BARRIER, IT WOULD BE 12:00
4 O'CLOCK. IN OTHER WORDS, THAT'S THE DIRECTION OF THE FORCE
5 THAT'S APPLIED BY THE BARRIER.

6 IF IT'S AN ANGLE OR A SIDE IMPACT, FOR EXAMPLE, IF IT
7 WAS A T-BONE TO THE LEFT, THAT PRINCIPAL DIRECTION OF FORCE
8 MIGHT BE 9:00 O'CLOCK OR 270 DEGREES.

9 Q. SO WHAT IS THE PDOF OF THE NCAP TEST?

10 A. ZERO OR 12:00 O'CLOCK.

11 Q. AND WHAT IS THE PDOF OF MR. ANDREWS' CRASH?

12 A. I'D HAVE TO LOOK IT UP. I THINK IT'S ABOUT 10 DEGREES, 15
13 DEGREES TO THE LEFT. VERY CLOSE.

14 Q. VERY SIMILAR, CORRECT?

15 A. VERY SIMILAR, YES. YES. SO MAYBE 11:30 AS OPPOSED TO
16 12:00 O'CLOCK.

17 Q. I WANT TO TALK TO YOU ABOUT THE NCAP TEST ON THE MAZDA3.

18 THE NCAP TEST THAT WAS DONE ON AN '04 MAZDA3, IS THAT
19 THE SAME AS THE '05 MAZDA3?

20 A. YES.

21 Q. AND IN THE MAZDA3 NCAP, HOW MUCH INCHES OF SPOOL-OUT DID
22 THE BELT EXPERIENCE IN THE DRIVER'S SEAT?

23 A. 17.

24 Q. 17 INCHES.

25 DID THE DRIVER'S AIRBAG AND THE PRETENSIONER FIRE IN

1 THE NCAP TEST?

2 A. YES.

3 Q. SO YOU'VE GOT ALMOST 17 INCHES OF SPOOL-OUT EVEN WITH AN
4 AIRBAG?

5 A. YES.

6 Q. HOW ABOUT THE PASSENGER SEATBELT, DO YOU RECALL?

7 A. I THINK IT WAS ABOUT -- I WROTE THAT DOWN. LET ME LOOK.
8 I'LL GET IT RIGHT. 22.

9 Q. THE PASSENGER SEATBELT SPOOLED OUT 22 INCHES. WAS IT THE
10 SAME SEATBELT AS THE DRIVER'S SEATBELT?

11 A. YES.

12 Q. WHY DID THE PASSENGER SEATBELT SPOOL OUT AN EXTRA FIVE AND
13 A HALF INCHES?

14 A. THE PASSENGER DOESN'T HAVE A STEERING WHEEL. THEY ARE
15 ALLOWED TO GO FURTHER.

16 Q. SO WITH THIS SEATBELT IF YOU DON'T HAVE THE STEERING WHEEL
17 TO STOP YOU, THEN SOMETHING ELSE IS GOING TO STOP YOU?

18 A. CORRECT.

19 Q. YOU'LL GO UNTIL SOMETHING ELSE DOES.

20 OKAY. WHAT DOES THIS SLIDE TELL US THAT WE ARE
21 LOOKING AT NOW?

22 A. WHAT THIS SLIDE DOES IS ON THE TOP RIGHT HERE, THIS IS
23 TIME ZERO. SO AT THE START OF THE EVENT OR AT THE START OF THE
24 CRASH WE SEE THE DUMMY'S HEAD IS RIGHT HERE. THAT'S THE
25 DRIVER'S HEAD.

1 OKAY. AND THEN AT 82 MILLISECONDS -- .082. THAT'S
2 MILLISECONDS. SO AT 82 MILLISECONDS THE DUMMY'S HEAD, I'M
3 POINTING THIS RED ARROW AT IT, BUT IT'S HARD TO SEE A LITTLE
4 BIT HERE, BUT IT'S DEEP INTO THE AIRBAG. AND SO HE HAS MOVED
5 HERE (INDICATING), OKAY?

6 THE OTHER THING THAT'S INSTRUMENTED IN THAT
7 INSTRUMENTATION IS THE HEAD ACCELERATION. SO THERE'S
8 INSTRUMENTS IN THE DUMMY'S HEAD TO MEASURE THE HEAD
9 ACCELERATION. AND WHAT WE SEE WHEN WE LOOK AT THAT HEAD
10 ACCELERATION IS IT PEAKS. THE MAXIMUM VALUE THERE FOR THE HEAD
11 ACCELERATION IS AT ABOUT 82 MILLISECONDS, WHICH IS HERE, WHICH
12 IS THAT LOWER RIGHT CORNER.

13 WHAT THAT TELLS ME IS THAT THE MAXIMUM HEAD
14 ACCELERATION IS OCCURRING AS HE IS DEEP INTO THE AIRBAG, AND
15 BECAUSE THAT'S WHERE THE MAX IS, I KNOW THAT HE BOTTOMED OUT
16 THE AIRBAG. SO HE LITERALLY WAS ALLOWED TO MOVE SO FAR FORWARD
17 THAT HE WENT THROUGH THE AIRBAG AND CONTACTED THE STEERING
18 WHEEL UNDERNEATH IT, AND THAT'S WHAT RESULTED IN THE PEAK
19 ACCELERATION.

20 Q. SO YOU USED THE TERM "BOTTOMING OUT." THAT'S WHEN THE
21 HEAD ACTUALLY GOES THROUGH THE AIRBAG AND HITS THE STEERING
22 WHEEL?

23 A. RIGHT.

24 Q. IS THAT SUPPOSED TO HAPPEN?

25 A. NO.

1 Q. AND YOU TALKED ABOUT THIS ARROW POINTING TO SOMETHING ON
2 THE BOTTOM PHOTO, THAT IT'S HARD TO SEE, BUT IS THAT THE AIRBAG
3 THAT THE ARROW IS POINTING AT?

4 A. IT'S HIS HEAD. SO IF WE CAN ERASE MY YELLOW SQUIGGLES ON
5 THERE FOR A MINUTE, IS IT POSSIBLE TO ZOOM IN ON THAT? OR
6 THERE MAY BE ONE MORE SLIDE AFTER THIS THAT IS JUST -- YEAH,
7 THERE YOU GO. MAYBE THAT ONE.

8 Q. OKAY.

9 A. SO WHAT WE SEE HERE IS THAT'S THE SAME TEST. AND WE SEE
10 THE DUMMY'S HEAD IS HERE AND THE BAG IS DEFORMING AROUND HIM.
11 SO THE BAG IS, OF COURSE, YOU KNOW, FULL OF AIR, BUT IT ALSO
12 HAS VENT HOLES. SO IT'S NOT LIKE -- IT'S NOT SOLID. IT'S
13 INTENDED TO VENT AS YOU ENGAGE IT. AND WHAT HAPPENS HERE IS HE
14 IS ALLOWED TO GO SO FAR FORWARD WITH THAT 17 INCHES THAT THE
15 DUMMY LITERALLY GOES THROUGH THE BAG AND BOTTOMS IT OUT SO THAT
16 HE HITS THE HARD STRUCTURE OF THE STEERING WHEEL BEHIND IT AND
17 THAT'S WHAT PEAKS THE ACCELERATION.

18 Q. I WANT TO TALK ABOUT HOW THE AUTOLIV SEATBELT IN THE
19 MAZDA3 COMPARES WITH SOME OF THE OTHER SEATBELTS IN THE SAME
20 CLASS AS THE MAZDA3.

21 THE NCAP TEST THAT WE ARE LOOKING AT IS LABELED RIGHT
22 HERE, CORRECT? IT'S GOT THE DATE THAT IT WAS DONE?

23 A. YES.

24 Q. OKAY. AND WHAT IS THAT DATE?

25 A. DECEMBER 17TH, '03.

1 Q. AND MICAH ANDREWS' CAR WAS WHAT MODEL YEAR?

2 A. '05.

3 Q. '05. AND SO THIS IS A PUBLICLY AVAILABLE CRASH TEST,
4 CORRECT?

5 A. OF COURSE.

6 Q. IS THERE ANY QUESTION THAT AUTOLIV, WHETHER AUTOLIV HAD
7 ACCESS TO THIS TEST BEFORE MICAH ANDREWS BOUGHT HIS CAR?

8 A. NO.

9 Q. OR WHETHER AUTOLIV HAD ACCESS TO THIS TEST BEFORE MICAH
10 ANDREWS WAS IN HIS CRASH?

11 A. NO.

12 Q. NOW I WANT TO TALK ABOUT HOW THE MAZDA3, THE AUTOLIV
13 SEATBELT IN THE MAZDA3 PERFORMED COMPARED TO SOME OTHER CARS IN
14 THE SAME CLASS. AND I AM GOING TO USE A BOARD. THIS HAS BEEN
15 MARKED AS PLAINTIFF'S HEARING EXHIBIT 1074 FOR THE RECORD.

16 THE COURT: ALL RIGHT. THANK YOU.

17 BY MS. CANNELLA:

18 Q. HOW DOES THE AUTOLIV SEATBELT COMPARE TO THE SEATBELTS IN
19 THE OTHER CARS IN THE SAME CRASH?

20 A. THE SPOOL-OUT IS GROSSLY MORE.

21 Q. SO THE AUTOLIV SEATBELT IN THE MAZDA3 IS UP THERE IN THE
22 RED BAR, CORRECT?

23 A. YES. SO WHAT WE HAVE DONE HERE IS PLOTTED THE AMOUNT OF
24 SPOOL-OUT, THE INCHES OF SPOOL-OUT ALLOWED BY THAT LOAD LIMITER
25 DEVICE. THESE ALL HAVE THEM. AND I LOOKED AT ALL OF THE

1 VEHICLES THAT I COULD FIND DATA FOR IN THE SAME CLASS OF
2 VEHICLE AS THE MAZDA AND THAT'S WHAT THESE ARE. AND WHEN YOU
3 LOOK AT THOSE, WHAT YOU SEE IS ULTIMATELY ABOUT SIX INCHES, IT
4 TURNS OUT, IS ABOUT THE AVERAGE, WHEREAS THE MAZDA IS SPOOLING
5 OUT, AS I SAID, 17 INCHES IN THAT SAME NCAP TEST AND THESE ARE
6 BASED UPON NCAP RESULTS.

7 THE COURT: AND THERE IS NO INDUSTRY STANDARD TO SAY
8 THIS IS HOW FAR IT SHOULD GO, IT'S JUST HOW THEY WANTED TO
9 DESIGN IT?

10 THE WITNESS: IT'S HOW THEY DESIGNED IT. IT'S THAT
11 TWO-KILONEWTON BAR WITHOUT LIMITING IT.

12 SO THERE'S ANOTHER WAY TO -- THERE'S TWO WAYS,
13 REALLY, TO SLOW THAT DOWN OR TO LIMIT THAT. ONE IS TO MAKE THE
14 BAR STRONGER. THAT'S THE EASIEST. YOU JUST MAKE THE BAR
15 STRONGER. AND THE WAY THEY DO THAT IS SIMPLY TO MAKE IT BIGGER
16 IN DIAMETER. IT'S FAIRLY STRAIGHTFORWARD. I'D LIKE TO PRETEND
17 WE ARE SMARTER THAN THAT, BUT IT'S NOT THAT HARD.

18 THE OTHER WAY TO DO IT IS TO PUT A MECHANICAL STOP IN
19 THERE. IN OTHER WORDS, TO ONLY ALLOW IT TO TURN SO MANY TIMES.
20 AND WE WILL TALK ABOUT THAT, BUT THAT IS ANOTHER WAY TO DO IT.

21 THE COURT: NOW, IF YOU DO THAT, DO YOU RUN THE RISK
22 OF THE SEATBELT GOING INTO THE PERSON'S BODY?

23 THE WITNESS: AS YOU HOLD IT BACK MORE AGGRESSIVELY,
24 THOSE FORCES GO UP, YES. IF YOU TAKE IT OFF ALTOGETHER, NO
25 SEATBELT FORCE, BUT WE KNOW THAT'S BAD. SO THAT'S WHAT'S

1 BEING -- THAT'S WHAT'S BEING TUNED SO TO SPEAK.

2 THE COURT: THANK YOU.

3 BY MS. CANNELLA:

4 Q. I WANT TO JUST QUICKLY TOUCH ON THAT BEFORE WE MOVE ON,

5 BUT WHAT IS THE RISK, THE PRIMARY RISK OF INJURIES IF YOU

6 TIGHTEN UP A SEATBELT TO YOUR CHEST?

7 A. THE RISKS THAT ARE DISCUSSED AND THAT ARE THERE IS

8 SHOULDER-BELT-INDUCED INJURIES IS THE WAY WE WOULD REFER TO

9 THAT AND TYPICALLY IT'S BROKEN RIBS. TYPICALLY IT'S BROKEN

10 RIBS. IF YOU GO TOO FAR, YOU CAN END UP WITH A FLAILED CHEST.

11 AND IF YOU TAKE IT TO AN EXTREME, PERHAPS A RUPTURED AORTA.

12 BUT THOSE -- TYPICALLY IT'S BROKEN RIBS.

13 Q. HOW MANY IN 30 YEARS, HOW MANY RUPTURED AORTAS HAVE YOU

14 SEEN FROM A SEATBELT BEFORE OR AFTER THE INCLUSION OF TORSION

15 BARS?

16 A. WELL, I'VE BEEN DOING THIS A LONG TIME AND I'VE BEEN DOING

17 THIS BEFORE THESE DEVICES WERE IMPLEMENTED AND BECAME POPULAR.

18 Q. SO BEFORE SEATBELTS WERE MADE TO ALLOW THE SPOOL-OUT?

19 A. RIGHT. AND THEY WEREN'T ALWAYS THAT WAY SO THAT LOAD

20 LIMITER WAS NOT ALWAYS THERE. IT'S ONLY BEEN THERE SINCE ABOUT

21 EARLY 2000'S. BUT BEFORE THAT, THEY WEREN'T THERE AT ALL, AND

22 EVEN THEN I DIDN'T -- THE RUPTURED AORTAS WERE EXTREMELY RARE

23 AND TYPICALLY AND MOST COMMONLY THEY WERE FROM THE CHEST TO

24 STEERING WHEEL CONTACT, NOT NECESSARILY FROM THE BELT. BUT I

25 MEAN, IN FAIRNESS, THAT IS PART OF THE DISCUSSION.

1 Q. WOULD YOU CHARACTERIZE THE RISK OF A RUPTURED AORTA AS A
2 SIGNIFICANT ONE BASED ON YOUR EXPERIENCE LOOKING AT ALL THESE
3 CASES?

4 A. NO, IT'S NOT. IT'S SOMETHING TO BE MINDFUL OF, BUT
5 IT'S -- AGAIN, WE COULD TAKE THE LOAD LIMITER OUT ALTOGETHER
6 AND THAT'S A RELATIVELY MINOR RISK.

7 Q. OKAY.

8 A. IT'S MUCH MORE IMPORTANT TO PREVENT THAT FORWARD
9 EXCURSION. THAT'S WHAT WE WANT TO CONTROL. WE DON'T WANT THE
10 UPPER TORSO, HEAD AND NECK LEADING, TO SLAM INTO THINGS.

11 Q. LET'S GO BACK TO THE NCAP DATA.

12 SO TELL US. THE DATA THAT YOU HAVE IN THIS CHART,
13 WHERE DID IT COME FROM?

14 A. THAT CAME FROM A SURVEY OF NCAP TESTS JUST LIKE THE ONE WE
15 JUST SAW.

16 Q. AND NCAP TESTS, THEY ARE PUBLICLY AVAILABLE, CORRECT?

17 A. YES.

18 Q. WE CAN ALL GO GET THEM OFF THE INTERNET RIGHT NOW IF WE
19 WANTED TO?

20 A. THAT'S EXACTLY WHAT I DID.

21 Q. AND AUTOLIV CAN GO GET THEM OFF THE INTERNET, CORRECT?

22 A. YES.

23 Q. AUTOLIV HAD ACCESS TO ALL THIS INFORMATION BEFORE MICAH
24 ANDREWS RECEIVED HIS INJURIES?

25 A. OF COURSE.

1 Q. AND SO AUTOLIV KNEW THAT ITS SEATBELT WAS PERFORMING MORE
2 THAN TWICE AS BAD AS THE SECOND WORST PERFORMER, CORRECT?

3 THE COURT: HOLD ON; HOLD ON; HOLD ON.

4 MS. CANNELLA: SORRY.

5 MR. SCRIBNER: I HAVE AN OBJECTION TO THE QUESTION AS
6 CALLING FOR PURE SPECULATION. WE'LL LET AUTOLIV SPEAK FOR WHAT
7 IT KNEW. THAT'S SPECULATION.

8 MS. CANNELLA: I CAN REPHRASE.

9 THE COURT: IF HE KNOWS. UNLESS HE KNOWS
10 SPECIFICALLY WHAT AUTOLIV KNEW AND HE CAN TESTIFY TO IT, I
11 DON'T WANT HIM SPECULATING.

12 MS. CANNELLA: OKAY.

13 BY MS. CANNELLA:

14 Q. I'LL REPHRASE, MR. MEYER.

15 AUTOLIV HAD THE ABILITY TO GET ALL OF THIS
16 INFORMATION, CORRECT?

17 A. YES.

18 Q. AND THIS IS A SEATBELT. THIS IS SEATBELT INFORMATION,
19 RIGHT?

20 A. YES.

21 Q. AND AUTOLIV IS A SEATBELT MANUFACTURER?

22 A. CORRECT.

23 Q. ONE OF THE BIGGEST IN THE WORLD?

24 A. YES.

25 Q. AND IS IT LIKELY THAT OR WOULD YOU EXPECT THAT OTHER

1 ENGINEERS WHO MAKE SEATBELTS WOULD STUDY SEATBELTS OUT THERE IN
2 THE WORLD?

3 A. OF COURSE.

4 Q. THE SECOND WORST PERFORMER IN THE CLASS, WHICH CAR IS
5 THAT?

6 A. THE SATURN L SERIES.

7 Q. AND HOW MUCH SPOOL-OUT DID IT EXPERIENCE?

8 A. 216 MILLIMETERS, WHICH IS PROBABLY ABOUT SEVEN OR EIGHT
9 INCHES BASED UPON YOUR CHART THERE. IN COMPARISON, THE MAZDA
10 WAS 428 MILLIMETERS, SO LESS THAN HALF.

11 Q. LESS THAN HALF?

12 A. YEAH.

13 Q. IS IT FAIR TO SAY THAT THE AUTOLIV SEATBELT THAT WAS IN
14 THE MAZDA3 IS AN EXTREME OUTLIER FOR THE CARS IN ITS CLASS?

15 A. OH, ABSOLUTELY.

16 Q. DO YOU KNOW OF ANY OTHER CARS THAT WERE BUILT ON THE SAME
17 PLATFORM AS THE MAZDA3?

18 A. YES.

19 Q. THE VOLVO S40, CORRECT?

20 A. THE VOLVO S40 IS ONE, YES.

21 Q. AND HOW DID IT PERFORM COMPARED TO THE MAZDA3?

22 A. THE SPOOL-OUT REPORTED IN THE SAME TEST, THAT IS, THE NCAP
23 TEST, AGAIN FOR THE MAZDA WAS 428 MILLIMETERS, WHICH IS ABOUT
24 17 INCHES. THE VOLVO S40 IN THE DRIVER'S POSITION REPORTED 165
25 MILLIMETERS SPOOL-OUT, WHICH IS ABOUT SIX AND A HALF INCHES.

1 Q. OKAY. AND JUST LOOKING AT VISUALLY THE DIFFERENCE BETWEEN
2 THE SEATBELT IN THE MAZDA3 AND THE SEATBELT IN THE SAME
3 PLATFORM, VOLVO S40, THAT'S ILLUSTRATED ON THE DEMONSTRATIVE
4 THAT I JUST PUT UP IN FRONT OF YOU, CORRECT?

5 A. YES.

6 Q. AND AGAIN, THIS IS THE DATA THAT YOU PULLED FROM PUBLIC
7 INFORMATION?

8 A. CORRECT.

9 Q. ALL RIGHT. WHO MANUFACTURED THE SEATBELT IN THE VOLVO
10 S40?

11 A. AUTOLIV.

12 Q. SO AUTOLIV KNEW THAT IT COULD MAKE A STRONGER SEATBELT.
13 WE KNOW THAT BECAUSE IT HAD ONE FOR THE VOLVO S40, CORRECT?

14 A. YES. THE VOLVO S40 HAD A SIX-KILONEWTON.

15 Q. AND WHY IS THERE SUCH A DIFFERENCE BETWEEN THE AUTOLIV
16 SEATBELT IN THE MAZDA3 AND THE VOLVO, IN THE AUTOLIV SEATBELT
17 IN THE VOLVO S40 IN TERMS OF SEATBELT SPOOL-OUT? WHAT'S THE
18 PRIMARY REASON?

19 A. THAT TORSION BAR. THE VOLVO IS MUCH STRONGER. IT'S A
20 SIX-KILONEWTON. IT IS WHAT IS REFERRED TO AS A DIGRESSIVE ONE.
21 IT STARTS AT SIX AND THEN STEPS DOWN, WHICH IS ANOTHER WAY THAT
22 WE CAN TUNE IT, BUT IT'S MUCH MORE ROBUST. IT'S A MUCH
23 STRONGER BAR. TWO KILONEWTONS IS A LOT LESS FORCE REQUIRED TO
24 SPOOL IT OUT THAN SIX.

25 Q. AND ABOUT HOW MUCH STRONGER IS THE VOLVO THAN THE MAZDA'S?

1 A. SIX KILONEWTONS IS ABOUT 1350 POUNDS AND TWO KILONEWTONS
2 IS 450 POUNDS.

3 Q. LET'S PUT IT IN PRACTICAL TERMS.

4 WHAT DOES IT MEAN FOR HOW MUCH RESTRAINT A PERSON
5 WILL RECEIVE WITH THE AUTOLIV SEATBELT IN THE MAZDA3 VERSUS THE
6 AUTOLIV SEATBELT IN THE VOLVO S40?

7 A. THE VOLVO IS GOING TO PROVIDE MUCH MORE RESTRAINT AND MUCH
8 MORE REDUCTION IN THAT FORWARD MOTION.

9 Q. AND WE CAN SEE THAT THE VOLVO IS GOING TO HAVE A LOT LESS
10 SPOOL-OUT, CORRECT?

11 A. YES.

12 Q. WHAT DOES IT MEAN FOR HOW MUCH DISTANCE A PERSON WILL
13 TRAVEL WITH THE AUTOLIV SEATBELT IN THE MAZDA3 VERSUS THE
14 VOLVO?

15 A. THAT DISTANCE IS A FUNCTION OF THAT SPOOL-OUT. SO THE
16 MORE SPOOL-OUT, THE MORE DISTANCE. SIX INCHES OR SIX AND A
17 HALF INCHES VERSUS 17 IS GOING TO BE A LARGE DIFFERENCE IN
18 FORWARD MOTION, FORWARD EXCURSION.

19 Q. WHAT DOES IT MEAN FOR THE DIFFERENCE IN HOW FAST A PERSON
20 IS GOING TO MOVE FORWARD IN THE AUTOLIV SEATBELT IN THE MAZDA
21 VERSUS THE AUTOLIV SEATBELT IN THE VOLVO?

22 A. THAT'S ANOTHER IMPORTANT CONSIDERATION, BECAUSE IT'S NOT
23 JUST THE MOTION BUT THE TWO-KILONEWTON BAR IS NOT GOING TO
24 ABSORB OR TAKE MUCH -- IT'S NOT GOING TO DISSIPATE MUCH ENERGY
25 AS IT'S TWISTING, WHICH MEANS THERE'S GOING TO BE MORE OF THAT

1 KINETIC ENERGY IS STILL IN VELOCITY. SO IT'S STILL -- THE
2 OCCUPANT IS GOING TO FLY MUCH FASTER FORWARD.

3 EVEN WITH THE SIX KILONEWTON, IF WE ASSUME FOR A
4 MINUTE THAT IT WENT JUST AS FAR, IT WOULD HAVE BURNED UP A LOT
5 MORE ENERGY, AND EVEN IF THE OCCUPANT HAD GOTTEN TO THE SAME
6 PLACE, THEY WOULD HAVE DONE THAT SO MUCH SLOWER AND WITH MUCH
7 LESS ENERGY, MUCH MORE -- IT'S MUCH MORE AGGRESSIVE WITH THE
8 WEAK TORSION BAR.

9 Q. AND PUT IN SIMPLE TERMS, WHAT WE ARE DOING HERE IS
10 DECIDING WHETHER THE ENERGY IS GOING TO BE ABSORBED IN THE
11 CHEST BY THE CHEST BONES OR IN THE HEAD WHEN SOMEONE HITS THEIR
12 FACE, CORRECT?

13 A. EXACTLY.

14 Q. AND SO VOLVO MADE THE CHOICE WITH THE SEATBELT THAT
15 AUTOLIV SOLD TO VOLVO TO PUT MORE OF THAT ENERGY IN THE CHEST,
16 CORRECT?

17 A. YES.

18 Q. AND AUTOLIV KNEW THAT THAT WAS HAPPENING WITH THE SAME
19 PLATFORM CAR BECAUSE IT WAS SELLING IT TO THE VOLVO?

20 A. RIGHT.

21 Q. IF A PERSON WERE TO -- WELL, LET ME BACK UP.

22 IF YOU ARE WEARING THE SEATBELT THAT AUTOLIV SOLD TO
23 VOLVO, YOU ARE LESS LIKELY TO HIT THE STEERING WHEEL, CORRECT?

24 A. OH, ABSOLUTELY.

25 Q. AND IF YOU DO HIT THE STEERING WHEEL, YOU ARE LESS LIKELY

1 TO HIT IT HARD ENOUGH TO REALLY HURT YOURSELF BAD?

2 A. RIGHT. EVEN IF YOU GET THERE, YOU ARE GOING TO GET THERE
3 WITH A LOT LESS FORCE, A LOT LESS VELOCITY AND A LOT LESS
4 ENERGY.

5 Q. SO THAT VOLVO AUTOLIV SEATBELT IS GOING TO REDUCE THE
6 LIKELIHOOD THAT, ALL THINGS BEING EQUAL, A PERSON GETS A
7 SERIOUS INJURY OR A FATAL INJURY IN A CRASH?

8 MR. SCRIBNER: I'M GOING TO OBJECT. I'M GOING TO
9 OBJECT TO THAT QUESTION. HE IS NOT A MEDICAL DOCTOR AND HE HAS
10 NO BUSINESS TALKING ABOUT INJURIES.

11 MS. CANNELLA: I'LL REPHRASE, YOUR HONOR.

12 MR. SCRIBNER: I'M NOT -- EXCUSE ME. I'M NOT DONE
13 YET. I'M SORRY. THAT'S THE WHOLE FOCUS --

14 THE COURT: YES, THAT'S THE ARGUMENT.

15 MR. SCRIBNER: -- OF OUR DAUBERT MOTION, WHICH HAS
16 NOTHING TO DO WITH WHAT I HAVE HEARD FOR AN HOUR NOW, BUT
17 THAT'S OUR OBJECTION.

18 MS. CANNELLA: YOUR HONOR, I CAN REPHRASE THAT. I
19 WAS IMPROVISING, WHICH WAS MY FAULT.

20 THE COURT: I SUSTAIN THAT OBJECTION. YOU CAN
21 REPHRASE YOUR QUESTION.

22 BY MS. CANNELLA:

23 Q. OKAY. THE WHOLE PURPOSE OF THE DESIGN OF STRENGTHENING A
24 TORSION BAR, THE DESIGN PURPOSE OF THAT IS TO SLOW AND REDUCE
25 FORWARD MOTION; IS THAT RIGHT?

1 A. YES.

2 Q. WHO IS THE INSURANCE INSTITUTE FOR HIGHWAY SAFETY?

3 A. IT IS A GROUP REFERRED TO AS IIHS. THE INSURANCE
4 INSTITUTE FOR HIGHWAY SAFETY IS AN ORGANIZATION FUNDED BY THE
5 INSURANCE COMPANIES AND THEY DO A LOT OF CRASH TESTING AND
6 SAFETY RATINGS AND SO FORTH THAT WE SEE ON TV.

7 Q. AND DID YOU LOOK AT AN IIHS FRONTAL CRASH TEST FOR THE
8 MAZDA3?

9 A. I DID.

10 Q. OKAY. LET'S SEE IF I CAN GET THIS TO PLAY.

11 IS THIS THE CRASH TEST THAT YOU LOOKED AT?

12 A. YES.

13 Q. AND HOW DID THE AUTOLIV SEATBELT PERFORM IN THIS TEST?

14 A. SIMILAR TO WHAT WE SAW IN THE NCAP. IN OTHER WORDS, IT
15 SPOOLS OUT QUITE AGGRESSIVELY. THE OCCUPANT, THE DUMMY, IS
16 SEEN TO GET VERY DEEP INTO THE AIRBAG. THIS TEST IS WHAT'S
17 REFERRED TO AS AN OFFSET FRONTAL SO THAT THE BARRIER THAT IT
18 HITS IS NOT ENTIRELY, COMPLETELY ACROSS THE FRONT OF THE
19 VEHICLE BUT IS OFFSET TO THE DRIVER'S SIDE.

20 BUT IT PERFORMED SIMILARLY TO THE NCAP TEST AND WE
21 SEE THE DUMMY AGAIN GET DEEP INTO THE AIRBAG. AND WHEN WE SLOW
22 THAT DOWN AND LOOK AT THE MOTION OF THE HEAD, IT'S
23 EFFECTIVELY -- HE'S UNRESTRAINED, EFFECTIVELY, HIS UPPER TORSO
24 BY THE BELT.

25 Q. DID YOU NOTICE ANY RESTRAINT THAT THE SEATBELT IS

1 PROVIDING IN THIS VIDEO?

2 A. NOTHING MEANINGFUL, NO.

3 Q. IS THAT HOW YOU WOULD EXPECT A SAFE SEATBELT TO PERFORM?

4 A. NO.

5 Q. AND AGAIN, THIS IIH [SIC] CRASH TEST IS PUBLICLY

6 AVAILABLE, CORRECT?

7 A. YES.

8 Q. DO YOU KNOW THE DATE IT WAS RUN?

9 A. I'M SORRY?

10 Q. DO YOU KNOW THE DATE IT WAS RUN?

11 A. IT MAY BE ON THE DOOR AGAIN. I DON'T REMEMBER OFF THE TOP

12 OF MY HEAD, BUT --

13 Q. DO THEY TYPICALLY RUN --

14 A. -- THAT IS AN '04 MODEL YEAR, THOUGH, SO IT WAS CERTAINLY

15 RUN BEFORE MR. ANDREWS' VEHICLE WAS MANUFACTURED.

16 Q. THANK YOU.

17 DURING YOUR DEPOSITION YOU TESTIFIED THAT MR. ANDREWS

18 WAS EFFECTIVELY UNRESTRAINED BY THE AUTOLIV SEATBELT. IS THAT

19 STILL YOUR OPINION TODAY?

20 A. YES, AND THIS TEST IN PART DEMONSTRATES THAT.

21 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT WHY THIS TEST

22 ILLUSTRATES THAT?

23 A. DO WE HAVE ANY FREEZE FRAMES FROM THE SIDE?

24 Q. I CAN GIVE YOU ONE.

25 A. I THINK THERE'S ONE IN THE POWERPOINT.

1 Q. OH, IS THERE?

2 A. WELL, YOU CAN STOP IT RIGHT THERE AND THEN GO FROM THERE
3 TO THE ONE IN THE POWERPOINT.

4 BUT ONE OF THE THINGS THAT -- SO THE SHOULDER BELT IS
5 OVER THE DUMMY'S LEFT SHOULDER RIGHT HERE AND WE SEE THAT THAT
6 IS SPOOLING OUT.

7 THIS DEVICE RIGHT THERE IS CLAMPED TO THE BELT.
8 THAT'S MEASURING THE LOAD. WE CAN SEE THAT MOVE. BUT WHAT IS
9 OF NOTE TO ME IS YOU CAN ALSO SEE THE ANGLE OF THE DUMMY'S HEAD
10 AND NECK, WHICH I AM NOT DOING THIS VERY WELL BUT I WANT TO GET
11 IT A LITTLE MORE LIKE THAT.

12 BUT, AT ANY RATE, THE SHOULDER BELT, IF IT'S
13 PROVIDING ANY MEANINGFUL RESTRAINT, SLOWS DOWN YOUR UPPER
14 TORSO, SLOWS DOWN YOUR CHEST. AND THEN THE HEAD MOVES, BECAUSE
15 THE HEAD IS CONNECTED, BUT THE SEATBELT IS NOT ON YOUR
16 FOREHEAD. SO THE HEAD AND NECK WOULD BEGIN TO SEE AN ANGULAR
17 DIFFERENCE BETWEEN THAT AND THE CHEST. AND I DON'T SEE THAT
18 HERE, WHICH TELLS ME THAT HE IS MOVING FORWARD AND THE SHOULDER
19 BELT IS NOT EVEN GIVING ENOUGH RESISTANCE TO ALLOW THE HEAD TO
20 CHANGE RELATIVE TO THE TORSO. IT'S MOVING FORWARD AS A UNIT.

21 AND IF YOU HOLD THE CHEST BACK MORE AGGRESSIVELY,
22 THEN THE HEAD ARC AND THE NECK BENDS, AND WE DON'T SEE THAT
23 HERE. SO WHAT I SEE HERE IS THE WHOLE THING IS GOING FORWARD
24 AND INTO THE BAG AND DEEP INTO THE BAG. SO THAT'S PART OF THE
25 REASON I SAY EFFECTIVELY UNRESTRAINED. IN OTHER WORDS, WE EVEN

1 LOOK AT THESE VIDEOS AND I DON'T SEE THE SHOULDER BELT CHANGING
2 HIS KINEMATICS AT ALL.

3 Q. OKAY. LET ME MAKE SURE I UNDERSTAND.

4 SO HIS HEAD IS UNRESTRAINED AND HIS CHEST IS MOVING
5 AT THE SAME SPEED AS THE HEAD?

6 A. WELL --

7 Q. ESSENTIALLY?

8 A. IT IS UNLESS THE SHOULDER BELT HOLDS IT BACK.

9 Q. CORRECT.

10 A. WHICH IS WHAT WE WOULD HOPE.

11 Q. SO IN THIS VIDEO YOU SEE THE HEAD AND THE -- THE
12 UNRESTRAINED HEAD AND THE SEATBELTED CHEST MOVING TOGETHER AT
13 THE SAME TIME?

14 A. RIGHT. WHAT I DON'T SEE IS I DON'T SEE THE HEAD CHANGING
15 ANGLES OR THE NECK CHANGING ANGLES RELATIVE TO THE TORSO. I
16 SEE THEM MOVING TOGETHER.

17 Q. OKAY.

18 A. WHICH TELLS ME THAT THAT LEVEL OF SHOULDER BELT RESTRAINT
19 IS EFFECTIVELY MEANINGLESS.

20 Q. SO THE REASONS, CAN YOU EXPLAIN TO THE COURT THE REASONS
21 WHY THIS SEATBELT IS DEFECTIVE?

22 A. BECAUSE THAT LOAD LIMITER IS ALLOWING GROSSLY TOO MUCH
23 EXCURSION AT SUCH A LOW LEVEL. SO THERE'S TWO ISSUES. ONE IS
24 THAT THE LEVEL IS SO LOW AND THAT THERE IS NO LIMIT TO IT. SO
25 ULTIMATELY THOSE TWO THINGS COMBINED EQUAL 20 INCHES, WHICH IS

1 AN UNREASONABLE AMOUNT. THERE'S NEVER ANY -- AND THE NCAP TEST
2 MADE CLEAR THAT THESE OTHER VEHICLES WITH SIX TO EIGHT INCHES
3 ARE SCORING EQUALLY AS WELL WITH HALF THE SPOOL-OUT. SO WHY IN
4 THE WORLD WOULD WE EVER WANT THAT MUCH SPOOL-OUT? THERE IS NO
5 RATIONALE FOR THAT.

6 SO IT'S TOO MUCH SPOOL-OUT AND THAT IS A FUNCTION OF
7 THE LOW THRESHOLD AND IT'S THE LACK OF ANY STOP TO IT. IF WE
8 MADE THE THRESHOLD HIGHER, THEN IT WOULD HAVE NECESSARILY
9 SPOOLED OUT LESS, SIMILAR TO THE VOLVO, OR IF YOU LIMIT THE
10 NUMBER OF TURNS AND SAY, OKAY, WELL, I'M GOING TO LET IT GO AT
11 TWO KILONEWTONS BUT I'M ONLY GOING TO LET IT TURN ONE OR TWO
12 TIMES AS OPPOSED TO THREE AND A HALF, WHAT THIS ONE DID, THEN
13 THAT WOULD ALSO BE A WAY TO LIMIT THAT. BUT AT SOME POINT WE
14 HAVE TO HOLD THE OCCUPANT AWAY FROM THE STEERING WHEEL AND THE
15 DASHBOARD AND THE STUFF IN FRONT OF US. AT SOME POINT YOU HAVE
16 TO LITERALLY RESTRAIN THEM. OTHERWISE, THAT'S ITS PURPOSE IN
17 LIFE.

18 Q. BECAUSE NO ONE WANTS TO SMASH INTO THE STEERING WHEEL.
19 YOU DON'T WANT TO ABSORB YOUR ENERGY THERE?

20 A. RIGHT.

21 Q. OKAY. WHAT ARE THE RISKS OF THE DESIGN THAT AUTOLIV CHOSE
22 FOR THIS SEATBELT?

23 A. THE RISKS FOR THIS ONE?

24 Q. YES.

25 A. SERIOUS AND FATAL INTERIOR CONTACT WITH THE FORWARD

1 COMPONENTS, EXACTLY THE RISK THAT OR THE INJURIES THAT MICAH
2 SUFFERED.

3 Q. IS THERE ANY UTILITY TO HAVING A TORSION BAR THAT IS THIS
4 WEAK, 2.0?

5 A. NO.

6 Q. IN FACT, AUTOLIV STARTED MANUFACTURING A STRONGER SEATBELT
7 FOR THE MODEL YEAR THAT WAS RIGHT AFTER MR. ANDREWS' MAZDA3,
8 CORRECT? THE '06?

9 A. THE '06, YES.

10 Q. IN YOUR OPINION DO THE RISKS OF HARM ARISING FROM THE
11 DESIGN OF THIS AUTOLIV SEATBELT OUTWEIGH THE UTILITY OF THAT
12 DESIGN?

13 A. ABSOLUTELY.

14 Q. OKAY. I WANT TO SWITCH GEARS A LITTLE BIT AND TALK ABOUT
15 WHETHER THIS WAS AUTOLIV'S SEATBELT. I WANT TO TALK ABOUT THE
16 EVIDENCE OF AUTOLIV'S INVOLVEMENT IN THE DESIGN OF THE
17 SEATBELT.

18 DID AUTOLIV DESIGN THE SEATBELT RETRACTOR IN
19 MR. ANDREWS' MAZDA3?

20 A. YES.

21 Q. DID IT DESIGN THE TORSION BAR AND THE SEATBELT RETRACTOR
22 IN MR. ANDREWS' MAZDA3?

23 A. YES.

24 Q. AND HOW DO YOU KNOW THAT?

25 A. IT'S CLEAR FROM THE DRAWINGS AS WELL AS OTHER MATERIAL,

1 BUT THE DRAWINGS ARE AUTOLIV DRAWINGS. THEY ARE AUTOLIV'S
2 DESIGN.

3 Q. I AM GOING TO HAND YOU WHAT I HAVE MARKED AS PLAINTIFF'S
4 EXHIBIT 74, PLAINTIFF'S HEARING EXHIBIT 74, AND WHAT IS THAT
5 DOCUMENT?

6 A. THAT IS A TECHNICAL DATA DOCUMENT DESCRIBING THE SUBJECT
7 RETRACTOR, WHICH IS INTERNALLY KNOWN AS THE R27LL.

8 Q. AND THE BATES NUMBER OF IT IS ALIV 3601. THIS ISN'T A
9 DOCUMENT THAT WAS PRODUCED IN THE ANDREWS CASE, CORRECT?

10 A. YES.

11 Q. OH, WELL, THE ANDREWS DOCUMENTS HAVE AUTOLIV AS THEIR
12 PRECEDING BATES NUMBER, CORRECT? THE WHOLE WORD "AUTOLIV"?

13 A. THAT'S MY RECOLLECTION, YES.

14 Q. OKAY. SO THIS DOCUMENT WAS PRODUCED IN A DIFFERENT CASE,
15 THE STEGALL CASE, CORRECT?

16 A. YES.

17 Q. OKAY. AND JUST FOR BACKGROUND FOR THE COURT, THE STEGALL
18 CASE IS A CASE THAT'S PENDING OUT IN CALIFORNIA; IS THAT RIGHT?

19 A. YES.

20 Q. AND WHAT IS THE ALLEGATION THERE? IS IT THE SAME
21 DEFENDANT, SAME DEFECT, OR --

22 A. IT'S EFFECTIVELY THE SAME VEHICLE. IT'S ALSO A FRONTAL
23 IMPACT. THE RIGHT FRONT OCCUPANT IN THAT CASE SUFFERED FACIAL
24 FRACTURES ASSOCIATED AGAIN WITH ABOUT 20 INCHES OF SPOOL-OUT.
25 THAT WAS ONE OF THE OTHER CASES THAT I HAD SEEN WAS THE SAME

1 VEHICLE IN THE RIGHT FRONT IN THE STEGALL CASE.

2 Q. AND THE TOP OF THIS DOCUMENT SAYS R27LL. IS THAT THE

3 RETRACTOR IN MR. ANDREWS' CAR?

4 A. YES.

5 Q. AND THIS HAS GOT AN AUTOLIV HEADER ON IT, CORRECT?

6 A. YES.

7 Q. AND THERE'S A COMPLETION DATE ON IT. DO YOU SEE THAT?

8 A. YES.

9 Q. WHAT IS THE COMPLETION DATE?

10 A. 1999.

11 Q. WHAT MONTH IN 1999?

12 A. JUNE.

13 Q. DOES IT ALSO LIST OTHER CUSTOMERS WHO ARE BUYING THAT

14 RETRACTOR?

15 A. YES.

16 Q. AND WHO ARE THOSE CUSTOMERS?

17 A. BMW, OPEL AND ROVER.

18 Q. I AM GOING TO HAND YOU WHAT I HAVE MARKED AS PLAINTIFF'S

19 HEARING EXHIBIT 40. AND THIS IS THE DEVELOPMENT SCHEDULE FOR

20 THE MAZDA3 THAT'S AT ISSUE IN THIS CASE?

21 A. YES.

22 Q. WHAT IS THE KICK-OFF DATE FOR THE MAZDA3 ON THAT DOCUMENT?

23 A. LATE NOVEMBER, DECEMBER 1999.

24 Q. SO THE RETRACTOR DOCUMENT THAT WE JUST LOOKED AT SAID THAT

25 THE AUTOLIV RETRACTOR WAS COMPLETED IN JUNE OF '99 AND THE

1 AUTOLIV DOCUMENT I JUST SHOWED YOU SAYS THAT THE MAZDA PROGRAM
2 DIDN'T EVEN START UNTIL SIX MONTHS LATER, CORRECT?

3 A. CORRECT.

4 Q. AND WHAT DOES THAT TELL YOU ABOUT WHO DESIGNED THE
5 RETRACTOR?

6 A. IT'S AN AUTOLIV RETRACTOR AND IT PRECEDED THIS MAZDA
7 VEHICLE.

8 Q. SO THAT'S THE RETRACTOR. LET'S LOOK AT THE TORSION BAR.

9 I AM GOING TO HAND YOU A DOCUMENT I HAVE MARKED AS
10 PLAINTIFF'S HEARING EXHIBIT 7.

11 A. OKAY.

12 Q. AND CAN YOU IDENTIFY THAT DOCUMENT FOR THE COURT, PLEASE?

13 A. YES. THIS IS A DETAILED DRAWING FOR THE TORSION BAR
14 COMPONENT ITSELF FOR THE R27LL RETRACTOR.

15 Q. AND THE R27LL IS THE RETRACTOR IN MICAH'S CAR?

16 A. CORRECT.

17 Q. AND THE NAME ON THIS DRAWING IS AUTOLIV, CORRECT?

18 A. CORRECT. THIS IS AN AUTOLIV DESIGN DRAWING.

19 Q. IT'S SMALL BUT CAN YOU SEE ON THE TOP RIGHT CORNER WHEN
20 VERSION A01 WAS DRAWN? DO YOU SEE THAT FEBRUARY 20TH, 1998
21 DATE?

22 A. YES.

23 Q. AND SO THEREFORE WE CAN CONCLUDE, SINCE WE KNOW THAT THE
24 MAZDA PROGRAM STARTED IN DECEMBER OF OR NOVEMBER OR DECEMBER OF
25 '99 AND THIS TORSION BAR WAS FIRST DRAWN ON FEBRUARY 20TH,

1 1998, OVER A YEAR BEFORE, THAT THE TORSION BAR DESIGN EXISTED
2 BEFORE AUTOLIV EVER EVEN GOT INVOLVED WITH MAZDA, CORRECT?

3 A. YES.

4 Q. SO WHAT DOES THAT TELL YOU ABOUT WHO DESIGNED THE TORSION
5 BAR?

6 A. AUTOLIV DID.

7 Q. OKAY. I WANT TO WALK THROUGH SOME OF THE DOCUMENTS THAT
8 YOU DISCUSSED IN YOUR SUPPLEMENTAL REPORT. I AM GOING TO HAND
9 YOU WHAT I HAVE MARKED PLAINTIFF'S HEARING EXHIBIT 53.

10 WHAT IS A TOLLGATE?

11 A. TOLLGATE. IT'S A TERM THAT WAS USED TO DESCRIBE INTERNAL
12 AUTOLIV MEETINGS RELATIVE TO THE MAZDA3 PROGRAM IN THIS CASE.

13 Q. AND THERE IS A GRAPHIC THAT YOU TALKED ABOUT IN YOUR
14 SUPPLEMENTAL REPORT. THE PAGES ARE NOT NUMBERED, BUT I THINK
15 IT'S THE FOURTH PAGE, YES.

16 SO THIS IS AN INTERNAL AUTOLIV DOCUMENT, CORRECT?

17 A. YES.

18 Q. LIKE SOMETHING AUTOLIV IS PRESENTING INTERNALLY TO ITSELF,
19 IT APPEARS TO BE?

20 A. YES.

21 Q. RIGHT. SO ON THE FOURTH PAGE IT TALKS ABOUT OVERVIEW OF
22 THE PROJECT. DO YOU SEE WHERE I AM?

23 A. I DO.

24 Q. ALL RIGHT. THAT LAST BULLET. CHANGES MADE: ONLY THE
25 FRONT BELT WAS CHANGED. AND THEN IT'S GOT SOME NUMBERS AND AN

1 ARROW AND SOME MORE NUMBERS BELOW IT.

2 CAN YOU TELL THE COURT WHAT THAT MEANS?

3 A. THE R27LL RETRACTOR IS THE RETRACTOR THAT WAS IN
4 MR. ANDREWS' CAR. THAT'S THE TWO-KILONEWTON LOAD LIMITER PLUS
5 BPP OR B -- PBP. IT STANDS FOR PYROTECHNIC BUCKLE
6 PRETENSIONER, WHICH MEANS THAT THE PRETENSIONER WAS ON THE
7 BUCKLE.

8 THERE ARE SOME DESIGNS THAT HAVE THE PRETENSIONER ON
9 THE RETRACTOR. SO THIS IS A NONPRETENSIONED RETRACTOR, THE
10 TWO-KILONEWTON, WITH THE BUCKLE PRETENSIONER. THAT WAS THE
11 ORIGINAL DESIGN. AND THEN IT SWITCHED TO -- THE ARROW IS
12 INDICATING A SWITCH TO AN R200RP, WHICH IS A DIFFERENT
13 RETRACTOR, THE R200 WITH A RETRACTOR PRETENSIONER, WHICH IS
14 WHAT THE "RP" STANDS FOR. THAT'S A RETRACTOR PRETENSIONER.
15 Q. SO THIS IS, IN SUMMARY, AUTOLIV DISCUSSING INTERNALLY
16 SWITCHING FROM ONE RETRACTOR AND BUCKLE TO ANOTHER RETRACTOR
17 AND BUCKLE ON THE MAZDA3, CORRECT?

18 A. CORRECT.

19 Q. HOLD THIS THOUGHT. SO I WANT TO TALK ABOUT THE VA/VE
20 DOCUMENTS AND THEY ARE GOING TO RELATE TOGETHER.

21 SO CAN YOU TELL THE COURT WHAT VA/VE IS?

22 A. VA/VE STANDS FOR VALUE ANALYSIS VALUE ENGINEERING AND IT
23 IS A CONDUIT OR A WAY BY WHICH AUTOLIV COMMUNICATED WITH MAZDA
24 SUGGESTED CHANGES.

25 THE COURT: SAY THAT LAST PART AGAIN.

1 THE WITNESS: SUGGESTED CHANGES. IT WAS BASICALLY A
2 CONDUIT FOR THE TWO TO COMMUNICATE.

3 BY MS. CANNELLA:

4 Q. OKAY. AND THE VA/VE I JUST HANDED YOU, WHICH WAS -- I'M
5 SORRY. WHAT WAS THE EXHIBIT NUMBER ON THAT?

6 A. HEARING EXHIBIT 24.

7 Q. HEARING EXHIBIT 24. THAT'S THE VA/VE FOR THE SWITCH FROM
8 THE OLD BUCKLE TO THE NEW BUCKLE, CORRECT?

9 A. YES. SO IN THE MIDDLE OF THE PAGE IT INDICATES THAT IT'S
10 SUGGESTED BY AUTOLIV THAT THE CURRENT BUCKLE, WHICH WAS THE
11 BUCKLE PRETENSIONER, BE CHANGED TO A NORMAL BUCKLE, THAT IS,
12 ONE WITHOUT THE PRETENSIONER.

13 Q. OKAY. SO JUST TO KIND OF TIE ALL THAT TOGETHER,
14 PLAINTIFF'S HEARING EXHIBIT 53, WHICH WAS FROM NOVEMBER 30TH,
15 2004, AUTOLIV IS TALKING ABOUT DOING THIS INTERNALLY. THE DATE
16 ON THIS VA/VE SUGGESTION I JUST GAVE YOU IS WHAT? JANUARY
17 2005, CORRECT?

18 A. MARCH 2005.

19 Q. I'M SORRY. MARCH 2005. THANK YOU.

20 AND THAT'S AFTER THE TOLLGATE?

21 A. CORRECT.

22 Q. OKAY. SO THIS IS A CHANGE THAT AUTOLIV IS SUGGESTING?

23 A. YES.

24 Q. WAS IT IMPLEMENTED IN THE MAZDA SEATBELT?

25 A. YES.

1 Q. WAS IT A DESIGN CHANGE THAT AUTOLIV SUGGESTED AND MAZDA
2 FOLLOWED?

3 A. YES.

4 Q. WHAT DOES THAT TELL YOU ABOUT WHETHER AUTOLIV WAS ACTIVELY
5 INVOLVED IN THE DESIGN OF THE SEATBELT IN THE MAZDA3?

6 A. THEY CERTAINLY WERE. THEY OF COURSE WERE.

7 Q. OKAY. YOUR REPORT ALSO DISCUSSED A COUPLE MORE -- EXCUSE
8 ME. I JUST WANT TO MAKE SURE THE RECORD IS CORRECT.

9 PLAINTIFF'S HEARING EXHIBIT 24, WE'VE GOT A DATE OF JANUARY
10 28TH, 2005 ON THAT. I KNOW IT'S SMALL, SO --

11 A. OH, YEAH. AND I'M SORRY. I WAS READING THE DATE AT THE
12 BOTTOM, WHICH APPARENTLY IS NOT THE RIGHT DATE. NO. THE
13 SUGGESTED SUBMISSION DATE IS 2005, JANUARY 28.

14 Q. OKAY. THERE WERE A COUPLE OTHER VA/VE SUGGESTIONS THAT
15 YOUR REPORT DISCUSSED AND I'VE MARKED THOSE AS PLAINTIFF'S
16 HEARING EXHIBITS 22 AND 23.

17 MS. CANNELLA: I'LL GIVE THIS TO YOU AT THE SAME
18 TIME.

19 THE COURT: THANK YOU.

20 BY MS. CANNELLA:

21 Q. OKAY. THESE ARE ADDITIONAL VA/VE SUGGESTIONS, CORRECT?

22 A. YES.

23 Q. ARE THESE ABOUT THE RETRACTOR OR THE TORSION BAR?

24 A. ONE IS ABOUT THE RETRACTOR, NOT THE TORSION BAR.

25 Q. AND WHICH ONE IS THAT?

1 A. 22.

2 Q. AND WHAT DOES 22 REFLECT?

3 A. A DISCONTINUATION OF THE ALR FEATURE, ALR/ELR.

4 Q. WHAT IS THAT?

5 A. THE RETRACTOR IS -- THERE'S A COUPLE OF WAYS TO DESIGNATE
6 THAT. THE ELR STANDS FOR EMERGENCY LOCKING RETRACTOR, WHICH
7 MEANS THAT IT IS GOING TO LOCK UP WHEN THE VEHICLE SENSES A
8 CRASH.

9 ANOTHER WAY TO DO IT IS TO HAVE AN AUTOMATIC LOCKING
10 RETRACTOR, WHICH IS THE ALR FEATURE. AND THE ALR FEATURE IS
11 WHAT CLICKS IN FOR THE PARENTS THAT HAVE CHILD SEATS. SO IF
12 YOU WANT TO PUT A CHILD SEAT IN THE SEAT AND ATTACH IT WITH A
13 REGULAR SEATBELT, IF YOU PULL THE BELT ALL THE WAY OUT AND THEN
14 LET IT BACK IN, IT CLICKS LIKE A RATCHET (INDICATING). AND IT
15 WON'T COME OUT AGAIN. THAT MEANS THAT IT'S SWITCHED INTO AN
16 AUTOMATIC. IT'S AUTOMATICALLY LOCKED SO IT STAYS LOCKED. AND
17 THEN THE WAY YOU DISENGAGE THAT IS TO SPOOL IT ALL THE WAY BACK
18 IN, STOW IT, AND THEN IT WILL COME OUT AND WORK NORMALLY AGAIN.

19 THE IDEA FOR THE AUTOMATIC LOCKING RETRACTOR REALLY
20 WAS BASED UPON CHILD SEATS SO THAT WHEN YOU CLICK YOUR CHILD
21 SEAT IN, YOU DON'T WANT THE CHILD SEAT TO FLOP AROUND UNTIL
22 THERE'S A CRASH. SO YOU PULL THE BELT OUT, PUT YOUR KNEE IN
23 THE SEAT AND CINCH IT UP REALLY TIGHT AND IT WILL STAY THERE.
24 THAT'S THE ALR FEATURE.

25 Q. SO THAT'S VA/VE DOCUMENTS AUTOLIV MAKING A DESIGN

1 SUGGESTION ABOUT THE RETRACTOR TO MAZDA, CORRECT?

2 A. RIGHT.

3 Q. AND DID MAZDA ACCEPT THAT DESIGN CHANGE?

4 A. EXHIBIT 22?

5 Q. YES, SIR.

6 A. AS FAR AS I KNOW.

7 Q. YES. IS IT REFLECTED ON THE DOCUMENT ITSELF? CORRECT?

8 A. WHERE ARE YOU LOOKING?

9 Q. ON THE LEFT SIDE THERE'S A BOX.

10 A. I SEE THE CURRENT CHANGE. I'M NOT -- I SEE THE CURRENT

11 AND THE SUGGESTED. I'M SORRY. AM I MISSING IT?

12 Q. I KNOW IT'S REALLY SMALL WRITING.

13 A. OH, YES. I'M SORRY. "VERIFYING DEPARTMENT COMMENT. TO

14 BE ADOPTED. THANK YOU FOR THE SUGGESTION." YES.

15 Q. AND THAT'S WRITTEN BY MAZDA, CORRECT?

16 A. CORRECT.

17 Q. THAT'S MAZDA?

18 A. CORRECT. YES. I'M SORRY. I WAS THE LINE UP.

19 Q. OKAY. AND PLAINTIFF'S HEARING EXHIBIT 23 IS THE SAME

20 THING, ANOTHER SUGGESTED CHANGE BY AUTOLIV, AND IN THAT SAME

21 BOX VERIFYING DEPARTMENT COMMENT. TO BE ADOPTED.

22 A. YES.

23 Q. AND IT'S GOT A SCHEDULED IMPLEMENTATION DATE THERE AS

24 WELL, CORRECT?

25 A. YES.

1 Q. AND THIS IS ABOUT A SPONGE COVER INTO A RESIN COVER. IS
2 THAT SPECIFIC TO OUR CASE? IS THAT RELEVANT TO OUR CASE?

3 A. NOT PARTICULARLY. IT HAS TO DO WITH THE BUCKLE.

4 Q. SO WHY IS THIS DOCUMENT IMPORTANT TO YOU?

5 A. THESE DOCUMENTS MAKE CLEAR THAT AUTOLIV IS ACTIVELY
6 PARTICIPATING IN DESIGNING THE RESTRAINT SYSTEM FOR THE MAZDA
7 VEHICLE AND IN FACT MAKING SUGGESTIONS OF CHANGES THAT ARE
8 ULTIMATELY BEING IMPLEMENTED AND RELIED UPON. AND THERE'S A
9 CONDUIT TO DO THAT BY VIRTUE OF THESE FORMS AND THAT IT HAS AND
10 WAS BEING DONE.

11 Q. SO THE EXISTENCE OF THE VA/VE PROCESS IS EVIDENCE THAT
12 AUTOLIV HAD THE ABILITY TO MAKE DESIGN CHANGE SUGGESTIONS AND
13 WAS DOING SO AND MAZDA WAS FOLLOWING THOSE SUGGESTIONS; IS THAT
14 CORRECT?

15 A. OF COURSE, YES.

16 Q. ALL RIGHT. I AM GOING TO HAND YOU WHAT I HAVE MARKED AS
17 PLAINTIFF'S HEARING EXHIBIT 25.

18 THE COURT: THANK YOU.

19 BY MS. CANNELLA:

20 Q. OKAY. SO I HAVE HANDED YOU PLAINTIFF'S EXHIBIT 25 AND 26.
21 THESE APPEAR TO BE DOCUMENTS THAT TRACK VA/VE SUGGESTIONS AMONG
22 OTHER THINGS; IS THAT RIGHT?

23 A. THAT'S MY INTERPRETATION, YES.

24 Q. OKAY. AND ON PLAINTIFF'S HEARING EXHIBIT 25 WE'VE GOT A
25 VA/VE PROPOSAL THAT'S HIGHLIGHTED TALKING ABOUT THE SEWING FOR

1 THE FRONT SEAT AND THE RIGHT SEAT LABELS BEING CHANGED; IS THAT
2 RIGHT?

3 A. YES.

4 Q. DO WE HAVE THAT VA/VE SUGGESTION?

5 A. I HAVEN'T FOUND IT AND I DON'T BELIEVE WE HAVE IT.

6 Q. THEN IT'S GOT ANOTHER ONE HERE TALKING ABOUT A WASHER
7 BEING CHANGED IN ACCORDANCE WITH A VA/VE PROPOSAL; IS THAT
8 RIGHT?

9 A. YES.

10 Q. DO WE HAVE THAT VA/VE PROPOSAL?

11 A. NO.

12 Q. IT WAS NOT PRODUCED TO US, CORRECT?

13 A. I DON'T BELIEVE SO.

14 Q. AND ON PLAINTIFF'S HEARING EXHIBIT 26 THERE IS ANOTHER ONE
15 TALKING ABOUT CAULKING ON A COVER AND THAT SAYS IT'S IN
16 ACCORDANCE WITH A VA/VE PROPOSAL, CORRECT?

17 A. YES.

18 Q. DO WE HAVE THAT VA/VE PROPOSAL?

19 A. NO.

20 Q. AUTOLIV NEVER PRODUCED IT IN THIS CASE, DID IT?

21 A. NOT THAT I AM AWARE OF. I HAVEN'T BEEN ABLE TO FIND IT.

22 THE COURT: WHY IS THIS INFORMATION IMPORTANT FOR
23 THIS CASE?

24 THE WITNESS: THE VA/VE PROCESS ITSELF IS TELLING ME
25 THAT AUTOLIV IS PARTICIPATING. THIS IS TELLING ME THAT WE

1 HAVEN'T SEEN THEM ALL. SO I DON'T KNOW WHAT OTHER CHANGES WERE
2 SUGGESTED OR NOT.

3 THE COURT: THESE PARTICULAR CHANGES ARE IMPORTANT, I
4 UNDERSTAND, BECAUSE THEY DIDN'T GIVE THEM TO YOU, AND WHAT
5 ELSE? WHAT ELSE MAKES IT IMPORTANT?

6 THE WITNESS: FRANKLY, JUST THAT. THESE CHANGES
7 THEMSELVES, THE STITCHING OF THE LABEL IS NOT IMPORTANT TO THIS
8 CASE. BUT WHAT THAT DOES TELL ME IS WHEN I AM
9 CROSS-REFERENCING THEM, I AM NOT SEEING ALL OF THE DOCUMENTS
10 THAT I WOULD HAVE EXPECTED TO SEE, WHICH TELLS ME THAT IT'S NOT
11 A COMPLETE SET, WHICH TELLS ME THERE MAY BE OTHERS MISSING AS
12 WELL.

13 THE COURT: THAT COULD BE IMPORTANT?

14 THE WITNESS: THAT COULD BE IMPORTANT. AND IN FACT I
15 THINK THERE'S ANOTHER DOCUMENT THAT SAYS JUST THAT.
16 BY MS. CANNELLA:

17 Q. OKAY. I AM GOING TO HAND YOU WHAT I HAVE MARKED AS
18 PLAINTIFF'S HEARING EXHIBIT 10.

19 BEFORE WE TALK ABOUT PLAINTIFF'S HEARING EXHIBIT 10,
20 MR. WEEKS BROUGHT ME PLAINTIFF'S EXHIBIT, HEARING EXHIBIT 49,
21 WHICH GOES TO WHAT YOU WERE JUST EXPLAINING TO THE JUDGE
22 REGARDING OTHER VA/VE PROPOSALS THAT WE DON'T HAVE THAT COULD
23 BE IMPORTANT.

24 Q. OKAY. CAN YOU TURN TO AUTOLIV 1051? WELL, FIRST LET ME
25 ASK YOU, WHAT IS THIS DOCUMENT?

1 A. THIS IS ONE OF THOSE TOLLGATE DOCUMENTS. THIS IS ENTITLED
2 TOLLGATE-4 RELATIVE TO THE MAZDA3 PROGRAM, THE J48C PLATFORM,
3 DATED NOVEMBER 2003.

4 Q. DO YOU HAVE THIS VERSION WITH YOU IN YOUR -- DO YOU HAVE
5 THIS DOCUMENT WITH YOU IN YOUR FOLDER THERE?

6 A. YES.

7 MS. CANNELLA: OH, GREAT. I JUST REALIZED THAT THE
8 TRANSLATOR OMITTED PART OF THE DOCUMENT, SO THE ONE THAT I JUST
9 HANDED UP TO THE COURT DOES NOT HAVE ALL OF THE INFORMATION ON
10 IT THAT IT SHOULD.

11 THE COURT: CAN YOU SUPPLEMENT IT TO ME LATER?

12 MS. CANNELLA: YES, SIR.

13 BY MS. CANNELLA:

14 Q. OKAY. SO AUTOLIV 1051, THE VERSION THAT HAS ALL THE
15 INFORMATION ON IT, WHAT DO YOU SEE ON THAT PAGE THAT'S RELEVANT
16 TO YOUR OPINION? THERE IS A VA/VE SUGGESTION, CORRECT?

17 A. YES.

18 Q. OKAY.

19 A. YES. AND ON THAT PAGE -- IS IT HIGHLIGHTED SOMEWHERE?
20 THE FOURTH COLUMN OVER THAT BEGINS 2001, DECEMBER 20TH. IF YOU
21 GO DOWN THAT COLUMN TO THE THIRD BOX, IT INDICATES THAT THERE
22 IS A NOTATION ABOUT THE -- CHANGING THE LLD TO THE LL.

23 Q. OKAY. WHAT DOES THAT MEAN?

24 A. THE LLD IS THE LOAD LIMITER DIGRESSIVE, WHICH IS ONE OF
25 THOSE STEP-DOWN TYPES, AS COMPARED TO THE LOAD LIMITER, JUST

1 THE SIMPLE LOAD LIMITER, WHICH IS WHAT THIS VEHICLE HAD.

2 SO THIS VEHICLE WAS AT TWO KILONEWTONS ALWAYS. FOR
3 EXAMPLE, THE VOLVO WAS AT SIX KILONEWTONS AND THEN STEPPED DOWN
4 TO ABOUT TWO AND A HALF, BUT IT STARTED MUCH MORE STRONG. SO
5 THAT IS TELLING ME THAT THERE WAS A CHANGE THERE RELATIVE TO
6 THE LOAD LIMITER FROM A DIGRESSIVE ONE TO A NONDIGRESSIVE ONE.

7 AND IN THE VERSION I HAVE, THERE IS A FOOTNOTE FIVE
8 THERE THAT TAKES ME TO A TRANSLATION THAT SAYS OTHER -- THE
9 TRANSLATION FOR THAT JAPANESE THERE IS "OTHER SPECIFICATION
10 CHANGE VA/VE," WHICH SUGGESTS THAT THERE SHOULD BE A VA/VE
11 DESCRIBING THE LOAD LIMITER CHANGE FROM A DIGRESSIVE TO A
12 NONDIGRESSIVE AND THAT I CAN'T FIND. THAT I DON'T BELIEVE WE
13 HAVE.

14 Q. SO THAT'S A MISSING VA/VE SUGGESTION BY AUTOLIV TO MAZDA
15 ABOUT THE TORSION BAR IN THE MAZDA3; IS THAT RIGHT?

16 A. CORRECT, WHICH, OF COURSE, IS A RELEVANT TOPIC, YES.

17 Q. AND THE MOVE FROM A DIGRESSIVE LOAD LIMITER TO A REGULAR
18 LOAD LIMITER, WOULD THAT DECREASE THE STRENGTH OF THE TORSION
19 BAR IF YOU GO FROM LLD TO LL, 2.0 LL?

20 A. I WOULDN'T EXPECT IT TO BECAUSE I'VE NEVER SEEN -- IT'S
21 NOT GOING TO GO BELOW TWO. SO IT'S NOT GOING TO START AT TWO
22 AND GO SOMETHING BELOW THAT. I'VE NEVER SEEN THAT.

23 Q. OH, I'M SORRY.

24 A. WHICH MEANS IT'S PROBABLY GOING TO START, IF IT WAS A
25 DIGRESSIVE, IT'S GOING TO START AT SOMETHING MORE ROBUST. IN

1 THE CASE OF THE VOLVO, SIX.

2 Q. RIGHT.

3 A. BUT THREE OR FOUR OR FIVE OR WHATEVER. AND THEN STEP DOWN

4 MAYBE AS FAR AS A TWO, BUT AGAIN, I HADN'T SEEN THAT BEFORE.

5 BUT I CAN'T ENVISION IT EVER GOING FROM A TWO TO SOMETHING

6 LESS. I MEAN THAT WOULD -- YOU MAY AS WELL TAKE IT OFF.

7 Q. JUST TO MAKE SURE MY QUESTION IS CLEAR, FROM THE

8 SUGGESTION THAT AUTOLIV MADE BASED ON THE DOCUMENT THAT YOU

9 HAVE SEEN IS AN LL DIGRESSIVE, A LOAD LIMITER DEGRESSIVE,

10 AUTOLIV SAID, HEY, MAZDA, LET'S GO TO THE REGULAR LOAD LIMITER,

11 NOT DIGRESSIVE?

12 A. CORRECT.

13 Q. AND SO MY QUESTION IS: IF THEY ENDED UP AT A 2.0 FOR THE

14 REGULAR ONE, THE DIGRESSIVE ONE WOULD HAVE TO BE STRONGER,

15 CORRECT?

16 A. I WOULD BELIEVE THAT'S TRUE, YES.

17 Q. OKAY. ALL RIGHT. MR. MEYER, BASED ON THE DOCUMENT YOU'VE

18 SEEN, THEN, AUTOLIV IS SUGGESTING TO MAZDA TO MAKE THE TORSION

19 BAR AND THE SEATBELT LESS ROBUST, CORRECT?

20 A. YES.

21 Q. AND WHERE IS THE DOCUMENT THAT TELLS US WHY THIS HAPPENED

22 OR THAT IT HAPPENED, THE VA/VE? WE DON'T HAVE THAT, RIGHT?

23 A. CORRECT.

24 Q. AND MAZDA ULTIMATELY ACCEPTED THAT SUGGESTION, CORRECT?

25 A. THAT'S WHAT THEY PUT IN THE CAR.

1 Q. THAT'S WHAT WAS IN THE CAR SO WE KNOW THEY ACCEPTED IT,
2 RIGHT?

3 A. YES.

4 Q. SO THIS MOVE TO A LESS ROBUST TORSION BAR ALL STARTED WITH
5 AUTOLIV, AUTOLIV'S SUGGESTION, AUTOLIV VA/VE, CORRECT?

6 A. ACCORDING TO THIS DOCUMENT, YES, SOMETIME BACK IN '01.

7 Q. ALL RIGHT. MR. MEYER, WHAT IS THE BATES NUMBER ON THAT
8 DOCUMENT THAT WE JUST TALKED ABOUT?

9 A. AUTOLIV01051.

10 Q. 01051. AND IT TALKS ABOUT A VA/VE. BEFORE WE GOT
11 DOCUMENTS IN NOVEMBER 2018, DID WE HAVE ANY DOCUMENTS THAT TOLD
12 THE PLAINTIFF OR TOLD YOU AS AN ENGINEER WHAT A VA/VE EVEN WAS?

13 A. NO.

14 Q. DID YOU KNOW BEFORE NOVEMBER OF 2018 THAT A VA/VE WAS A
15 DOCUMENT WHERE AUTOLIV IS SUGGESTING DESIGN CHANGES TO MAZDA?

16 A. NO.

17 Q. SO THERE WAS NO WAY FOR THE PLAINTIFF TO KNOW, FOR YOU TO
18 KNOW, THAT AUTOLIV WAS INVOLVED IN MAKING A DESIGN SUGGESTION
19 THAT WEAKENED THE SEATBELTS IN THE MAZDA3 BEFORE NOVEMBER 2018?

20 A. THAT'S CORRECT.

21 Q. THAT WAS NOT BEFORE THE COURT ON THE MOTION FOR SUMMARY
22 JUDGMENT BACK IN 2016, CORRECT?

23 A. WELL, I HAVE NO IDEA, BUT I CAN'T IMAGINE HOW IT COULD
24 HAVE BEEN.

25 Q. GOTCHA.

1 OKAY. I WANT TO MOVE ON TO PLAINTIFF'S EXHIBIT 10,
2 WHICH IS THE STATEMENT OF WORK.

3 A. OKAY.

4 Q. I HANDED IT TO YOU WITH A PAGE OPENED AND SOME
5 HIGHLIGHTING. HAVE YOU GOT THAT PAGE?

6 A. I DO.

7 THE COURT: MS. CANNELLA, LET ME JUST ASK ONE
8 QUESTION. IF ANYBODY NEEDS TO BREAK OR ANYTHING, I AM FINE,
9 BUT SOMETIMES I HAVE BEEN ACCUSED OF GOING TOO LONG. IS
10 EVERYBODY OKAY?

11 MR. SCRIBNER: WE'RE GOOD. THANK YOU, YOUR HONOR.

12 MS. CANNELLA: ARE YOU OKAY?

13 THE WITNESS: YES. THANK YOU, YOUR HONOR.

14 MS. CANNELLA: OKAY.

15 MR. BUTLER: CAN WE BREAK FOR LUNCH AT SOME POINT?

16 THE COURT: WE ARE GOING TO BREAK FOR LUNCH. I
17 ASSURE YOU OF THAT, MR. BUTLER.

18 MR. BUTLER: THANK YOU, YOUR HONOR.

19 BY MS. CANNELLA:

20 Q. OKAY. THE PORTION THAT I HAVE HIGHLIGHTED THERE IS UNDER
21 THE ROW -- WELL, LET ME BACK UP. THIS IS A STATEMENT OF WORK,
22 CORRECT?

23 A. IT IS.

24 Q. HAVE YOU SEEN STATEMENTS OF WORK IN YOUR EXPERIENCE AS AN
25 ENGINEER?

1 A. YES.

2 Q. WHAT DO THEY GENERALLY DO?

3 A. THEY GENERALLY OUTLINE THE VARIOUS RESPONSIBILITIES

4 BETWEEN, IN MY WORLD, AN OEM MANUFACTURER AND/OR A COMPONENT

5 MANUFACTURER OR SUPPLIER OR SOMEONE OTHER THAN THE OEM.

6 Q. OKAY. SO THIS IS WHERE THE CAR MANUFACTURER TELLS THE

7 SUPPLIER WHAT ITS RESPONSIBILITIES ARE?

8 A. YES. IT'S AN AGREEMENT THAT OUTLINES WHO IS GOING TO DO

9 WHAT.

10 Q. AND WHEN YOU SAY "OEM," THAT STANDS FOR?

11 A. ORIGINAL EQUIPMENT MANUFACTURER. I'M SORRY. THAT'S THE

12 VEHICLE MANUFACTURER. IN THIS CASE THAT WOULD BE MAZDA.

13 Q. ALL RIGHT. SO THIS IS A LONG DOCUMENT, ISN'T IT?

14 A. YES.

15 Q. AND IT LISTS A VARIETY OF THINGS THAT MAZDA IS SUPPOSED TO

16 DO AND THE FSS IS SUPPOSED TO DO?

17 A. CORRECT.

18 Q. FSS IS FULL SYSTEM SUPPLIER?

19 A. FULL SERVICE SUPPLIER, I BELIEVE.

20 Q. FULL SERVICE SUPPLIER. THANK YOU.

21 AND WHO IS THAT WITH REGARD TO THE SEATBELT AND THE

22 OCCUPANT RESTRAINT SYSTEM?

23 A. AUTOLIV.

24 Q. OKAY. AND UNDER -- ON PAGE 10 OUT OF 24 OF THE DOCUMENT I

25 AM LOOKING AT UNDER FSS IT SAYS ROLES, AUTHORITY AND

1 RESPONSIBILITY, CORRECT?

2 A. YES.

3 Q. OKAY. AND THIS IS A DOCUMENT THAT'S BEEN CHECK TRANSLATED
4 FROM WHAT WE RECEIVED FROM AUTOLIV. SO IT SAYS: "IN THE
5 EVENT" -- THAT FIRST BOX UP THERE SAYS: "IN THE EVENT THAT A
6 DEFECT OCCURS IN THE CONTRACTED TEST ITEMS, IT SHOULD BE
7 REPORTED TO MAZDA IMMEDIATELY." MC IS MAZDA CORPORATION. "THE
8 CAUSE SHOULD BE INVESTIGATED AND A COUNTERMEASURE SHOULD BE
9 PROPOSED AT THE SAME TIME IN ORDER TO OBTAIN APPROVAL FROM
10 MAZDA CORPORATION."

11 DID I READ THAT CORRECTLY?

12 A. YOU DID.

13 Q. OKAY. AND THEN THE NEXT BOX SAYS: "IN THE EVENT THAT
14 THERE IS AN IMPACT ON THE CONTRACTED EVALUATION DUE TO A DEFECT
15 THAT OCCURS IN MAZDA CORPORATION'S EVALUATION REGION, THIS IS
16 TO BE PROMPTLY REPORTED TO MC, THE NECESSARY ADJUSTMENTS SHOULD
17 BE MADE TOGETHER WITH MC IN RELATION TO THE SUBSEQUENT
18 COUNTERMEASURES AND THE MATTER SHOULD BE HANDLED SO THAT THE
19 LEAST AMOUNT OF DAMAGE POSSIBLE IS CAUSED TO PRODUCT
20 DEVELOPMENT."

21 DID I READ THAT CORRECTLY?

22 A. YOU DID.

23 Q. AND THE DIFFERENCE BETWEEN THIS CHECK TRANSLATION, WHICH
24 WAS DONE BY THE SAME TRANSLATOR THAT AUTOLIV USED TO TRANSLATE
25 ITS DOCUMENTS FOR US THAT IT HAD TRANSLATED, THE DIFFERENCE

1 THEN IS THAT INSTEAD OF THE WORD "DEFECT," THEY ARE USING THE
2 WORD "CONCERN" IN THE ORIGINAL DOCUMENT WE RECEIVED FROM
3 AUTOLIV, CORRECT?

4 A. YES.

5 Q. SO WHAT DOES THIS STATEMENT OF WORK, WHETHER IT SAYS
6 CONCERN OR DEFECT, WHAT DOES THIS TELL YOU ABOUT WHETHER
7 AUTOLIV HAD ANY DESIGN INPUT OR RESPONSIBILITY OR WHETHER IT
8 WAS ACTIVELY INVOLVED IN THE DESIGN OF THE DEFECTIVE SEATBELT?

9 A. IT TELLS ME THAT THEY ABSOLUTELY DID AND IN FACT NOT ONLY
10 ARE THEY, AS WE HAVE ESTABLISHED WITH THE PRIOR DOCUMENTS,
11 DESIGNING THE ORIGINAL SEATBELT, THEY ARE ALSO TASKED WITH
12 DESIGNING THE COUNTERMEASURES IF A PROBLEM OCCURS, DEFECT OR
13 CONCERN OR OTHERWISE. BUT THAT'S AN ALTERNATIVE DESIGN
14 PROCESS. IN OTHER WORDS, THE COUNTERMEASURE IS A FIX.

15 Q. DID YOU KNOW ABOUT THIS DOCUMENT BEFORE NOVEMBER 2ND,
16 2018?

17 A. I HADN'T SEEN IT. I WOULD HAVE ASSUMED THAT THERE WAS
18 ONE, BUT I HADN'T SEEN IT.

19 Q. SO YOU DID NOT HAVE THE INFORMATION IN THIS STATEMENT OF
20 WORK UNTIL THE CASE GOT BACK FROM APPEAL AND WAS REOPENED AND
21 WE CONTACTED YOU TO LOOK AT IT AGAIN?

22 A. CORRECT.

23 Q. OKAY.

24 A. THIS CAME WITH THE MOST RECENT PRODUCTION TO ME.

25 Q. BUT IT WAS RELEVANT, IT WAS IMPORTANT TO WHO WAS INVOLVED

1 IN THE DESIGN, CORRECT?

2 A. ABSOLUTELY. SURE. THAT'S SOMETHING THAT YOU LOOK TO FOR
3 THOSE ROLES, AUTHORITIES AND RESPONSIBILITIES.

4 Q. THE OTHER DOCUMENT THAT WE RECEIVED IN THE NOVEMBER 2018
5 BATCH WAS A BASIC TRADING AGREEMENT; IS THAT RIGHT?

6 A. YES.

7 Q. AND DO YOU HAVE THAT IN FRONT OF YOU?

8 A. I DO.

9 Q. I APOLOGIZE. I DON'T HAVE COPIES OF THAT ONE, BUT IT'S AN
10 EXHIBIT TO THE --

11 THE COURT: YOU CAN GIVE IT TO ME LATER. YOU CAN
12 GIVE IT TO ME LATER.

13 MS. CANNELLA: OKAY.

14 THE WITNESS: I HAVE IT.

15 BY MS. CANNELLA:

16 Q. DID YOU FIND IT?

17 A. I DID.

18 Q. OKAY.

19 A. SO I HAVE IT.

20 Q. AND WHAT ABOUT THE BASIC TRADING AGREEMENT WAS IMPORTANT
21 TO YOUR OPINION THAT AUTOLIV WAS INVOLVED IN THE DESIGN OF THE
22 DEFECTIVE SEATBELT?

23 A. IN THE BASIC TRADE AGREEMENT, PAGE NINE, THEY ARE TASKED
24 AS PARTY B AND IT DESCRIBES THAT THEY SHALL ENDEAVOR TO IMPROVE
25 THE UNIT PRICE, QUANTITY, FUNCTION AND PRODUCTION METHOD OF THE

1 DELIVERED ITEMS AND THAT THEY SHALL ACTIVELY CONDUCT NEW
2 TECHNICAL DEVELOPMENTS, PROPOSE IMPROVEMENTS AND PROVIDE
3 INFORMATION AND OTHER COOPERATION TO PARTY "A" TO ACHIEVE THIS.

4 IN OTHER WORDS, THE RELATIONSHIP IS SUCH THAT AUTOLIV
5 IS TASKED AND EXPECTED AND CERTAINLY HAS THE ABILITY TO CONDUCT
6 TECHNICAL DEVELOPMENTS, PROPOSE IMPROVEMENTS, EVALUATE QUALITY,
7 FUNCTION, ET CETERA. THAT'S ALL PART OF THE DESIGN PROCESS, SO
8 AGAIN THIS IS MORE EVIDENCE THAT THEY ARE ACTIVELY INVOLVED IN
9 THE DESIGN PROCESS.

10 Q. AND THAT DOCUMENT WE GOT IN NOVEMBER 2018 AS WELL?

11 A. YES.

12 Q. SO YOU COULDN'T INCLUDE THAT SPECIFIC LANGUAGE IN YOUR
13 OPINION BACK BEFORE THE CASE WAS ON APPEAL IN 2016?

14 A. NO. I HADN'T SEEN IT BACK THEN.

15 Q. I WANTED TO MENTION ONE OTHER THING ABOUT THE VA/VE
16 PROPOSALS THAT WE ARE MISSING.

17 I AM GOING TO HAND YOU PLAINTIFF'S EXHIBIT,
18 PLAINTIFF'S HEARING EXHIBIT 126.

19 ON THE SECOND PAGE OF THAT DOCUMENT THERE IS A
20 HIGHLIGHTED SECTION AND THE SECOND SENTENCE SAYS -- WELL, LET
21 ME BACK UP. THIS IS AN INTERNAL AUTOLIV BUSINESS TEAM UPDATE,
22 CORRECT?

23 A. YES.

24 Q. AND THIS IS THE AUTOLIV TEAM THAT'S ASSIGNED TO THE MAZDA
25 BUSINESS; IS THAT RIGHT?

1 A. YES.

2 Q. OKAY. AND SO THIS AGENDA OR MEMO THAT MEMORIALIZES WHAT
3 AUTOLIV IS TALKING ABOUT INCLUDES A SECTION UNDER COST
4 REDUCTION AND MARGIN IMPROVEMENTS AND IT SAYS THERE, THE SECOND
5 SENTENCE, WE ARE PLANNING TO INVITE MAZDA ENGINEERS IN OUR HFO
6 OFFICE TO INTRODUCE VA/VE IDEAS FOR THE J48C ON DECEMBER 24TH
7 AND DECEMBER 25TH.

8 DID I READ THAT CORRECTLY?

9 A. YOU DID.

10 Q. THAT'S TWO DAYS OF MEETINGS ABOUT VA/VE PROPOSALS,
11 CORRECT?

12 A. YES.

13 Q. SO THAT SEEMS LIKE THAT'S PROBABLY A LOT OF PROPOSALS; IS
14 THAT RIGHT? IS THAT FAIR?

15 A. I WOULD THINK SO.

16 Q. IT'S GOING TO TAKE TWO DAYS TO DISCUSS THEM?

17 A. I WOULD THINK SO.

18 Q. AND HOW MANY ACTUAL VA/VE PROPOSALS DO WE HAVE
19 DOCUMENTATION OF? THREE, CORRECT, OF THE FORMS?

20 A. YES.

21 Q. ALL RIGHT, MR. MEYER. THE LAST THING THAT I WANT TO TALK
22 TO YOU ABOUT IS THE ALTERNATIVE DESIGNS THAT YOU PROPOSED IN
23 THE CASE. AND LET ME GET THIS. FOR SOME REASON IT'S NOT
24 TALKING TO EACH OTHER. ZOOM.

25 OH, GOT IT. THANKS.

1 AFTER YOUR INVESTIGATION IN THIS CASE IN WHICH YOU
2 CONCLUDED THAT THE SEATBELT DESIGN IS DEFECTIVE, DID YOU
3 CONSIDER WHETHER THERE WERE ALTERNATIVE DESIGNS TO THE ONE THAT
4 AUTOLIV USED IN THIS SEATBELT?

5 A. YES.

6 Q. AND DID YOU CONCLUDE THAT THERE WERE ALTERNATIVE DESIGNS?

7 A. YES.

8 Q. LET'S WALK THROUGH THEM ON THE SLIDES. WHAT IS THE ONE
9 THAT WE SEE RIGHT HERE?

10 A. THIS IS A LOAD LIMITER ALSO. IT IS A -- NOT A TORSION BAR
11 DESIGN BUT IT IS A LOAD LIMITER. AND IN THIS DESIGN, THE
12 RETRACTOR ITSELF, THE ENTIRE RETRACTOR IS ATTACHED TO WHAT
13 LOOKS KIND OF LIKE A LADDER, THAT VERTICAL PIECE THERE THAT
14 LOOKS LIKE A LADDER.

15 AND SO THOSE LITTLE TABS ARE CUT DOWN THE MIDDLE AND
16 THOSE TABS ARE INTENDED TO BEND OUT OF THE WAY. SO THE WAY
17 THIS ONE IS DESIGNED IS THAT WHEN THE BELT LOCKS UP AND YOU
18 PULL ON THE BELT, WHEN THAT FORCE GETS TO A CERTAIN POINT, THAT
19 THRESHOLD, AND YOU WANT TO SPOOL BELT OUT TO LIMIT THE LOAD,
20 RATHER THAN TWISTING A TORSION BAR IT EFFECTIVELY TEARS THROUGH
21 THE METAL IN THAT LADDER. SO WHAT HAPPENS IS THE ENTIRE
22 RETRACTOR IS ALLOWED TO MOVE UP, THE B-PILLAR WHERE IT'S
23 ATTACHED, AND IT MOVES UP. AND AS IT MOVES UP, THEN, OF
24 COURSE, MORE BELT COMES OUT.

25 THE POINT OF THAT IS THAT IN THAT DESIGN, IT WILL

1 ONLY MOVE UP UNTIL IT HITS THE END OF THE LADDER. SO IT IS A
2 GIVEN AMOUNT, A FINITE AMOUNT, AND THAT TURNS OUT TO BE SIX
3 INCHES. SO THAT DESIGN OF LOAD LIMITER, AGAIN, WE COULD
4 CONTROL THAT FORCE ANY WAY WE WANTED TO; HOWEVER, WE DESIGNED
5 THE LADDER AND HOW MUCH FORCE IT TAKES TO TEAR THROUGH THERE.

6 BUT THE POINT THAT I AM MAKING HERE IS THAT THAT IS A
7 LIMIT. IT ONLY WILL GO SIX INCHES BECAUSE THERE IS NO TORSION
8 BAR IN THERE. SO THAT IS A DIFFERENT DESIGN ALTOGETHER THAT IS
9 A LOAD LIMITER, PROVIDES THE SIMILAR LOAD LIMITER BENEFITS BUT
10 ONLY TO SIX INCHES, ONLY TO A GIVEN AMOUNT, AT WHICH POINT IT
11 WON'T LET OUT ANY MORE.

12 Q. SO YOU CAN GET THAT BENEFIT OF LESS PRESSURE ON YOUR CHEST
13 BUT YOU CAN ALSO PUT A STOP ON IT THAT SAYS NO MORE THAN SIX
14 INCHES?

15 A. RIGHT.

16 Q. OKAY.

17 A. AT SOME POINT WE HAVE TO STOP YOU.

18 Q. AT SOME POINT REDUCING YOUR CHANCE OF A RIB FRACTURE IS
19 NOT WORTH SMASHING YOUR SKULL, CORRECT?

20 A. AT SOME POINT THE HEAD AND NECK IS MORE VULNERABLE THAN
21 THE CHEST. THE CHEST HAS ALL THAT -- A LOT OF SKELETAL
22 STRUCTURE ACROSS IT. IT'S A MORE DIFFUSE SPREADING OF THE
23 FORCE. IT'S DESIGNED IN A MUCH BETTER WAY TO TAKE THAT. BUT
24 AT SOME POINT, WE HAVE TO SAY NO MORE.

25 Q. AND HOW ABOUT THIS NEXT SLIDE, WHAT'S A FORCE PLATE LOAD

1 LIMITER?

2 A. SO THE FORCE PLATE IS A WAY TO -- THIS STILL ALLOWS THE
3 SHAFT TO TURN. SO THIS STILL HAS A TORSION BAR, IF YOU WILL.
4 SO THIS SHAFT STILL TURNS INSIDE THE RETRACTOR, BUT THERE IS
5 THIS DEVICE AND THE NEXT SLIDE WILL KIND OF DEMONSTRATE IT.

6 SO HERE IS THAT DEVICE, THIS RED THING. SO WHAT
7 HAPPENS IS AS THE BAR OR THE SPOOL TURNS, THE PIECE OF METAL
8 THAT WAS THAT IN HERE AS DEPICTED IN RED TWISTS AROUND UNTIL
9 EVENTUALLY YOU RUN OUT OF THAT AND THAT STOPS IT FROM TURNING.
10 SO ANOTHER WAY TO SAY, OKAY, WE ARE GOING TO ALLOW THE SHAFT TO
11 TURN, BUT WE ARE GOING TO STOP IT AT A CERTAIN POINT. WE ARE
12 ONLY GOING TO ALLOW IT TO TURN ONE REVOLUTION OR TWO
13 REVOLUTIONS AND THAT IS A MECHANICAL WAY TO SAY I NOW CAN'T
14 TWIST THAT, I'VE RUN OUT OF THAT LEASH, SO TO SPEAK, AND NOW I
15 AM AT THE END OF MY ROPE AND NO MORE.

16 Q. OKAY. HOW ABOUT THIS ONE, THE TORSION BAR WITH A TUNABLE
17 MECHANICAL STOP?

18 A. THIS IS ANOTHER WAY TO DO IT AND THIS ONE IS TUNABLE
19 BECAUSE -- THEY ARE ALL TUNABLE, BUT THIS ONE IS VERY EASILY
20 TUNABLE BECAUSE THIS IS -- HERE IS YOUR TORSION BAR HERE, RIGHT
21 HERE. AND THIS IS THE -- THIS PART RIGHT THERE IS THE PART
22 THAT'S GOING TO TURN THAT SHAFT. WELL, THIS IS INSERTED AND
23 CONNECTED TO THIS. WE ARE GOING TO CALL THAT A BOLT, OKAY?
24 BECAUSE IT'S GOT THREADS ON IT. SO THINK OF THAT AS A BOLT.
25 THIS COLLAR RIGHT HERE, THIS COLLAR, THINK OF THAT AS THE NUT,

1 OKAY? AND THAT'S GOING TO THREAD ONTO THE BOLT.

2 SO WHAT HAPPENS IS WHEN YOU START, THERE IS A GAP
3 HERE BETWEEN THE NUT, WHICH IS HERE, AND THE BOLT END, WHICH IS
4 THERE. AS THE TORSION BAR TWISTS -- AND THAT'S A LITTLE PIECE
5 OF TWINE THAT I PUT IN THERE SO I WAS TRYING TO DEMONSTRATE
6 THAT TWISTING. AS THE TORSION BAR TWISTS, THE BOLT TURNS ON
7 THE NUT. THE NUT STAYS FIXED. YOU CAN TURN IT UNTIL IT
8 BOTTOMS OUT. SO IT WOULD BE LIKE YOU TOOK THE NUT AND YOU PUT
9 IT ALL THE WAY TO THE END OF THE BOLT. NOW IT WON'T TURN ANY
10 MORE. IT'S TUNABLE BECAUSE I CAN SET THAT GAP AT WHATEVER I
11 WANT. IF I WANT IT TO TURN SIX TIMES, I CAN PUT THE NUT FAR
12 AWAY AND ALLOW IT TO TURN SIX TIMES. IF I WANT IT TO TURN
13 THREE TIMES, I CAN PUT IT A LITTLE CLOSER SO IT JUST TURNS
14 THREE TIMES. IF I WANT TO IT TO TURN JUST ONCE, I CAN PUT IT
15 REAL CLOSE AND THEN IT JUST TURNS ONCE. AND THAT'S WHAT MAKES
16 IT TUNABLE.

17 SO IT'S REALLY JUST A FUNCTION OF -- IT'S VERY
18 SIMPLE. YOU JUST ADJUST THAT INITIAL GAP AND PLACEMENT TO
19 WHATEVER, HOWEVER NUMBER OF TURNS YOU WANT TO ALLOW. USUALLY
20 IT'S ABOUT SIX INCHES OF BELT SPOOL-OUT PER TURN. SO IF WE LET
21 THE WHOLE THING GO ONCE, SIX INCHES; TWICE, 12; THREE, 18. IN
22 OUR CASE, 20 IS ABOUT THREE AND A HALF, WHICH IS WHAT I WAS
23 TESTING WHEN I LOOKED AT THAT ANGLE.

24 SO THESE ARE ALL DEVICES THAT WILL ALLOW THE LIMITING
25 OF THE LOAD BUT PUT INTO IT SO IT DOESN'T GO UNTIL YOU RUN OUT

1 OF WEBBING, WHICH IS THE WAY THIS ONE IS DESIGNED. THIS ONE
2 DOESN'T HAVE ANY OF THOSE FEATURES SO IT WOULD LITERALLY GO
3 UNTIL THERE NO MORE WEBBING ON THE SPOOL OR, IN MR. ANDREWS'
4 CASE, UNTIL HE HITS THE STEERING WHEEL.

5 Q. AND LET ME ASK YOU THIS AND THIS IS IMPORTANT FOR THIS
6 CASE: THE TORSION BAR WITH THE TUNABLE MECHANICAL STOP, CAN
7 YOU TUNE IT OR ADJUST IT IN A WAY TO ONLY GET SIX INCHES OF
8 SPOOL-OUT?

9 A. OF COURSE.

10 Q. OKAY. CAN YOU DO THAT WITH THE FORCE PLATE LOAD LIMITER
11 TO ONLY GET SIX INCHES?

12 A. ABSOLUTELY.

13 Q. CAN YOU DO THAT WITH THE LADDER-TYPE LOAD LIMITER?

14 A. EXACTLY, AND THAT ONE IS LIMITED TO SIX.

15 Q. AND HOW MUCH SPOOL-OUT DID THE VOLVO GET IN THESE NCAP
16 TESTS?

17 A. SIX AND A HALF.

18 Q. 6.3, CORRECT?

19 A. YES.

20 Q. SO BASICALLY THE SAME SPOOL-OUT YOU GOT WITH THE VOLVO,
21 YOU COULD HAVE USED ANY OF THESE ALTERNATIVE DESIGNS TO GET
22 THAT SAME SIX INCHES?

23 A. YES. NOW, THE VOLVO DIDN'T DO IT WITH A STOP. THEY DID
24 IT WITH A STRONGER BAR.

25 Q. THAT'S A GOOD POINT. SO ANOTHER ONE OF YOUR ALTERNATIVE

1 DESIGNS IS TO MAKE THE TORSION BAR STRONGER?

2 A. YES.

3 Q. AND THE DESIGN PURPOSE OF MAKING A STRONGER TORSION BAR IS
4 TO REDUCE SEATBELT PAY-OUT; IS THAT FAIR?

5 A. YES. IT'S TO REDUCE THE FORWARD EXCURSION AND REDUCE --
6 AND REDUCE THE POTENTIAL AND PROBABILITY OF INJURIOUS CONTACT.
7 SO IT'S TO HOLD THE OCCUPANT BACK. THAT'S THE PURPOSE. THE
8 STRONGER THE TORSION -- THE STRONGER TORSION BAR IS INTENDED,
9 FUNDAMENTALLY DESIGNED TO HOLD THE OCCUPANT AND PROVIDE BETTER
10 RESTRAINT AND KEEP THEM FURTHER AWAY FROM THE STRUCTURE IN
11 FRONT OF THEM.

12 Q. AND SO WHETHER YOU DO IT WITH A STRONGER TORSION BAR OR A
13 MECHANICAL STOP YOU DESIGN THESE SEATBELTS THESE WAYS TO LIMIT
14 THAT EXCURSION, CORRECT?

15 A. YES.

16 Q. AND TOTALLY APART FROM THE ALTERNATIVE DESIGN LABEL, WE'LL
17 SAY, WHAT OTHER MANUFACTURERS ARE DOING AT THE SAME TIME THAT
18 AUTOLIV IS SELLING THIS SEATBELT BOTH -- OR TO MAZDA AND
19 SELLING A DIFFERENT SEATBELT TO VOLVO, ALL OF THOSE CARS ON
20 THAT CHART, THE PERFORMANCE THAT WE SEE THERE IS RELEVANT TO
21 HOW REASONABLE OR UNREASONABLE AUTOLIV WAS IN MANUFACTURING
22 THIS SEATBELT. IS THAT FAIR?

23 A. YES.

24 Q. SO YOU CAN'T UNDERSTAND HOW EXTREME OF AN OUTLIER THE
25 AUTOLIV SEATBELT IN THE MAZDA WAS UNLESS YOU UNDERSTAND THAT IN

1 THE VOLVO THERE WAS SIX INCHES OF SPOOL-OUT AND IN THE CAVALIER
2 THERE WAS FOUR INCHES OF SPOOL-OUT AND IN THE CIVIC WE HAD
3 ABOUT FOUR AND A HALF. IS THAT A FAIR STATEMENT? IN ORDER TO
4 UNDERSTAND HOW BAD THE SEATBELT WAS YOU NEED TO KNOW ABOUT ALL
5 THESE OTHER SEATBELTS?

6 A. YES, I THINK THAT'S FAIR.

7 THE OTHER PART OF THE THING THAT I LOOK AT IS, IS
8 THERE ANY REASON FOR THAT RED LINE TO BE SO LONG? AND THERE IS
9 NOT, BECAUSE WHEN WE LOOK AT THE OTHER ONES, THE OTHER ONES ARE
10 PROVIDING GOOD SAFETY WITH MUCH LESS. SO WHY IN THE WORLD --
11 AND I CONSIDERED THAT QUESTION, IS THERE ANY BASIS OR RATIONALE
12 TO ALLOW THAT TO HAPPEN? AND THERE ISN'T. IT ONLY, ONLY MAKES
13 FOR A RISK. THERE IS NO BENEFIT THERE.

14 MS. CANNELLA: THAT'S ALL I HAVE, YOUR HONOR.

15 THE COURT: MR. SCRIBNER, NO OBJECTION TO ANY OF THE
16 EXHIBITS THAT CAME IN?

17 MR. SCRIBNER: NO, SIR.

18 THE COURT: I WAS PLANNING ON BREAKING FOR LUNCH AT
19 12:15. I DID NOT STOP PLAINTIFF FROM PUTTING FORTH HER WHOLE
20 CASE UNINTERRUPTED. IT MIGHT BE FAIRER IF WE START YOUR CROSS
21 AFTER LUNCH UNLESS YOU THINK YOU CAN DO IT IN A SHORTER PERIOD
22 OF TIME.

23 MR. SCRIBNER: I CAN DO IT PRETTY QUICKLY. I AM NOT
24 SURE ABOUT 15 MINUTES.

25 THE COURT: 20?

1 MR. SCRIBNER: YES. YOU CAN GIVE ME THE LOOK.

2 THE COURT: I'LL TELL YOU WHAT. WE'LL GO UNTIL
3 12:30.

4 MR. SCRIBNER: THANK YOU, YOUR HONOR.

5 THE COURT: IS EVERYBODY OKAY BODY-WISE FOR 30 MORE
6 MINUTES?

7 MS. CANNELLA: YES, YOUR HONOR.

8 THE COURT: OKAY.

9 MR. BUTLER: YOUR HONOR, ONE POINT. I'VE GOT THE
10 EXHIBIT NUMBER FOR THAT BASIC TRADING AGREEMENT THAT WE FAILED
11 TO BRING WITH US. IT'S PLAINTIFF'S EXHIBIT NUMBER 54 AND YOUR
12 HONOR SAID WE COULD SUBMIT IT LATER.

13 WE CAN BRING FOUR COPIES DOWN TO THE COURT. HOW
14 WOULD YOU LIKE FOR US TO SUBMIT THAT?

15 THE COURT: WHAT'S THE EASIEST? YOU ALL CAN EMAIL IT
16 TO ME OR YOU CAN BRING IT TO ME. WHAT IS EASIER FOR YOU TO GET
17 IT TO ME?

18 MR. BUTLER: WE CAN EMAIL IT TO MS. WRIGHT. IT'S 10
19 OR 15 PAGES.

20 THE CLERK: DOES IT HAVE ANY COLOR?

21 MS. CANNELLA: NO, MA'AM.

22 THE CLERK: OKAY. BLACK AND WHITE.

23 THE COURT: JUST EMAIL IT TO US.

24 MR. BUTLER: OKAY. THANK YOU, YOUR HONOR.

25 MS. CANNELLA: THANK YOU.

1 THE COURT: THAT'S 54?

2 MR. BUTLER: 54, YES, YOUR HONOR.

3 THE COURT: THANK YOU.

4 YOU MAY PROCEED, SIR.

5 MR. SCRIBNER: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. SCRIBNER:

8 Q. MR. MEYER, GOOD TO SEE YOU AGAIN.

9 A. HELLO.

10 Q. THE JUDGE ASKED YOU ABOUT INDUSTRY STANDARDS. DO YOU
11 RECALL THAT?

12 A. YES.

13 Q. YOU WOULD AGREE THAT YOU HAVE NEVER DESIGNED AN AIRBAG FOR
14 COMMERCIAL USE, TRUE?

15 A. THAT'S CORRECT.

16 Q. YOU'VE NEVER DESIGNED A SEATBELT FOR COMMERCIAL USE, TRUE?

17 A. THAT'S CORRECT.

18 Q. YOU'VE NEVER DESIGNED AN OCCUPANT RESTRAINT SYSTEM FOR
19 COMMERCIAL USE, TRUE?

20 A. THAT'S CORRECT.

21 Q. I LOOKED AT THE DISCLOSURES IN THIS CASE, MR. MEYER, AND
22 IT SAID YOU ARE AN EXPERT IN THE AREAS OF OCCUPANT CRASH
23 PROTECTION AND RESTRAINT SYSTEM DESIGN AND ANALYSIS; IS THAT
24 TRUE?

25 A. IT IS.

1 Q. ONCE UPON A TIME THERE WAS A DIFFERENT BIOMECHANIC WITH A
2 MEDICAL DEGREE. DO YOU RECALL THAT?
3 A. YES.
4 Q. HE IS NO LONGER IN THIS CASE, TRUE?
5 A. AGREED.
6 Q. AND SO HE HAS BEEN REPLACED BY DR. ZIEJEWSKI, TRUE?
7 A. YES.
8 Q. AND YOU REVIEWED HIS MATERIALS, CORRECT?
9 A. YES.
10 Q. PLAINTIFFS HAVE IDENTIFIED HIM AS A BIOMECHANICAL ENGINEER
11 AND AN EXPERT IN THE FIELDS OF INJURY CAUSATION, OCCUPANT
12 KINEMATICS AND BIOMECHANICS IN MOTOR VEHICLE COLLISIONS. DO
13 YOU AGREE WITH THAT?
14 A. I DO.
15 Q. AND THAT'S DIFFERENT FROM WHAT YOUR TESTIMONY IS IN THIS
16 CASE, TRUE?
17 A. YES, I BELIEVE IT IS.
18 Q. ALL RIGHT. YOU ARE NOT A MEDICAL DOCTOR, TRUE?
19 A. I AM NOT.
20 Q. THE AIRBAG IN THIS CASE DID NOT DEPLOY, TRUE?
21 A. CORRECT.
22 Q. AND WE CAN ALL AGREE THAT IN A VEHICLE IMPACT OF THIS
23 MAGNITUDE, IT SHOULD DEPLOY, TRUE?
24 A. I THINK WE CAN, YES.
25 Q. AND YOU WOULD AGREE THAT ALL OF THE FEDERAL TESTS THAT YOU

1 HAVE BEEN TALKING ABOUT FOR QUITE SOME TIME INVOLVE THE
2 DEPLOYMENT OF AN AIRBAG, TRUE?

3 A. YES, THEY ALL DEPLOYED.

4 Q. BECAUSE WE EXPECT THAT IN A --

5 A. IN ALL CASES.

6 Q. I'M SORRY. NOT TO INTERRUPT. GO AHEAD.

7 A. THEY DEPLOYED IN ALL OF THE CASES, YES.

8 Q. BECAUSE WE EXPECT THAT IN A 35-MILE-PER-HOUR CRASH,
9 CORRECT?

10 A. WE HOPE.

11 Q. WE EXPECT IT, TRUE?

12 A. WE HOPE. YOU MAY EXPECT IT. I RECOGNIZE IT DOESN'T
13 ALWAYS HAPPEN, BUT WE HOPE IT DOES, YES.

14 Q. WELL, THE FEDERAL GOVERNMENT REQUIRES TESTING THAT
15 INVOLVES THE DEPLOYMENT OF AN AIRBAG, TRUE?

16 A. OF COURSE.

17 Q. THEY DON'T HAVE ANY TEST AT 35 MILES AN HOUR WHERE THE
18 AIRBAG DOESN'T DEPLOY, DO THEY?

19 A. NO.

20 MR. SCRIBNER: ALL RIGHT. YOUR HONOR, MAY I
21 APPROACH?

22 THE COURT: YES, SIR.

23 MR. SCRIBNER: DO YOU NEED MORE WATER?

24 THE WITNESS: NO. I'M GOOD. THANKS.

25 THE COURT: THANK YOU.

1 MR. SCRIBNER: THANK YOU.

2 THE WITNESS: I HAVE TO MAKE IT UNTIL 12:30,

3 APPARENTLY.

4 BY MR. SCRIBNER:

5 Q. ALL RIGHT. I HAVE HANDED YOU A COPY OF YOUR REPORT.

6 A. YES.

7 Q. AND THIS IS THE REPORT YOU PREPARED EARLIER IN THE CASE

8 BEFORE THE DOCUMENTS WERE PRODUCED RECENTLY, CORRECT?

9 A. CORRECT. THIS WAS PREPARED NOVEMBER 6, 2005.

10 Q. ALL RIGHT. NOW, I'D LIKE TO CALL YOUR ATTENTION, SIR, TO

11 PAGE 19 OF THAT REPORT.

12 A. I HAVE IT.

13 Q. YOU SAY: "IMPORTANTLY, THE AIRBAG AND SEATBELT HAVE TO BE

14 MATCHED OR TUNED PROPERLY TO WORK TOGETHER FOR EFFECTIVE

15 OCCUPANT RESTRAINT, OTHERWISE TOO MUCH OCCUPANT EXCURSION MAY

16 RESULT IN OCCUPANT INJURIES." AND THAT'S YOUR OPINION TODAY,

17 CORRECT?

18 A. YES.

19 Q. YOU'VE GOT TO TUNE THAT AIRBAG AND SEATBELT, CORRECT?

20 A. YES.

21 Q. THEY'VE GOT TO WORK TOGETHER, CORRECT?

22 A. YES.

23 Q. "ALTHOUGH BELT SPOOL-OUT CAN LIMIT BELT-INDUCED CHEST

24 LOADS, IT STILL CORRESPONDINGLY RESULTS IN INCREASED OCCUPANT

25 EXCURSIONS."

1 DO YOU SEE THAT?

2 A. I DO.

3 Q. IN OTHER WORDS, THE HIGHER THE THRESHOLD, THE LESS FORWARD
4 EXCURSION BUT MORE BELT FORCE. CAN WE AGREE ON THAT?

5 A. YES.

6 Q. "IN THE FRONTAL CRASH MODE THIS ADDITIONAL EXCURSION IS A
7 FUNCTION OF THE LOAD LIMITER DESIGN AND IS ALWAYS EXPECTED TO
8 BE MANAGED BY THE FRONTAL AIRBAG." IS THAT YOUR OPINION?

9 A. YES.

10 Q. YOU AGREE WITH THAT?

11 A. YES.

12 Q. DID YOU REVIEW THE EXPERT TESTIMONY FROM MR. CARUSO?

13 A. NOT RECENTLY.

14 Q. HE IS THE PLAINTIFF'S AIRBAG EXPERT. DID YOU REVIEW IT
15 EVER?

16 A. I THINK I HAVE LOOKED AT IT BUT I DON'T RECALL IT AS I SIT
17 HERE.

18 Q. DO YOU KNOW WHY HE SAYS THE AIRBAG FAILED TO DEPLOY?

19 A. PROBABLY, BUT I'M NOT REAL SURE, SO --

20 Q. CAN WE AGREE THAT --

21 A. I MEAN HE HAD, HE HAD AN EXPLANATION, BUT I DON'T WANT TO
22 MISSPEAK AND ATTRIBUTE SOMETHING TO HIM THAT IS INACCURATE.

23 Q. I DON'T WANT YOU TO GUESS.

24 WE CAN AGREE IT WASN'T AUTOLIV'S FAULT, CORRECT?

25 A. I DON'T RECALL.

1 Q. YOU JUST DON'T KNOW?

2 A. I DON'T RECALL.

3 Q. OKAY.

4 A. IT WAS AN ELECTRONIC ISSUE.

5 Q. ELECTRONIC ISSUE?

6 A. RIGHT.

7 Q. FAILURE TO SEND A SIGNAL TO DEPLOY TO THE ACTUAL AIRBAG,

8 CORRECT?

9 A. ELECTRONIC ISSUE. IT COULD BE THAT. IT COULD BE A

10 SENSOR. I DON'T -- THE DETAILS I JUST DON'T RECALL.

11 Q. OKAY. NOT IMPORTANT TO YOUR OPINIONS?

12 A. I MEAN I RECOGNIZE IT DIDN'T DEPLOY. WE TALKED ABOUT

13 THAT.

14 Q. RIGHT. THE AIRBAG AND SEATBELT ARE SUPPOSED TO WORK

15 TOGETHER. YOU TOLD ME THAT, CORRECT?

16 A. SURE.

17 Q. BUT YOU DON'T CARE WHY THE AIRBAG DIDN'T DEPLOY; ISN'T

18 THAT RIGHT?

19 A. NO. I THINK THAT'S -- THE APPROACH THAT I TOOK IS WE

20 RECOGNIZE THE AIRBAG DIDN'T DEPLOY. THE QUESTION THAT BECOMES

21 IMPORTANT IS WHETHER OR NOT WE CAN ONE HUNDRED PERCENT RELY

22 UPON THAT DEVICE TO ALWAYS BE THERE WHEN WE MAKE THE DECISIONS

23 WE MAKE IN THE SEATBELT. I DON'T BELIEVE THAT'S A FAIR

24 ASSUMPTION TO MAKE.

25 HAVING SAID THAT, WHEN I LOOK AT THIS SEATBELT, WHAT

1 BECOMES CLEAR WITH THAT AMOUNT OF PAY-OUT IS THERE IS NO WAY
2 THAT THIS SEATBELT WILL PROVIDE ANY PROTECTION, THE SHOULDER
3 BELT, WITHOUT THE AIRBAG, AND THAT, I BELIEVE, IS NOT A
4 REASONABLE TRADEOFF.

5 Q. THE FOCUS OF YOUR WORK?

6 A. YES.

7 Q. THERE IS THIS TRADEOFF. YOU JUST THINK IT WAS AN
8 UNREASONABLE DECISION WITH RESPECT TO A TWO-KILONEWTON
9 THRESHOLD, CORRECT?

10 A. WELL, YEAH. THERE'S 17 INCHES EVEN WITH THE AIRBAG, SO
11 THAT'S STILL A GROSS AMOUNT OF EXCURSION.

12 Q. THAT'S WHAT I WANT TO TALK ABOUT. GO TO PAGE 24 OF YOUR
13 REPORT, PLEASE. AND THAT IS A TABLE THAT I THINK YOU DISCUSSED
14 WITH MS. CANNELLA EARLIER TODAY, CORRECT?

15 A. YES.

16 Q. AND YOU FOCUSED ON THE FACT THAT THE BELT PAY-OUT WAS
17 HIGHEST FOR THE MAZDA3, CORRECT?

18 A. YES.

19 Q. AND WE CAN AGREE IT'S LOWER FOR THE VOLVO S40 AT THE
20 BOTTOM OF THE PAGE, CORRECT?

21 A. WE CAN.

22 Q. WE CAN ALSO AGREE THAT THE SHOULDER BELT LOAD IS MUCH
23 HIGHER FOR THE VOLVO, CORRECT?

24 A. YES.

25 Q. THAT'S THE TRADEOFF, CORRECT?

1 A. THAT'S RIGHT.

2 Q. AND THAT THRESHOLD, THAT SHOULDER BELT LOAD IS WITH AN

3 AIRBAG, CORRECT?

4 A. AGREED.

5 Q. THAT NUMBER WOULD BE HIGHER WITHOUT AN AIRBAG, CORRECT?

6 A. NO.

7 Q. YOU DON'T BELIEVE THAT?

8 A. I DON'T BELIEVE THAT.

9 Q. OKAY.

10 A. I THINK THAT LOAD IS CONTROLLED BY THE LOAD LIMITER. THE

11 LOAD LIMITER IS WHAT'S LIMITING THE LOAD. IT'S NOT THE AIRBAG.

12 Q. AND IT'S A SIX-KILONEWTON LOAD LIMITER?

13 A. RIGHT.

14 Q. AND AUTOLIV SUPPLIED IT, CORRECT?

15 A. YES.

16 Q. AND ONE OF THE THINGS, THE ONLY THING, ACTUALLY, IN THE

17 ENTIRETY OF YOUR TESTIMONY THAT I WROTE DOWN, YOU SAID THAT WAS

18 VOLVO'S DECISION, CORRECT?

19 A. IT WAS VOLVO'S DECISION TO WHAT?

20 Q. TO USE A SIX-KILONEWTON THRESHOLD.

21 A. I ASSUMED THEY WERE IN PART OF THE DECISION, YES, I MEAN

22 ULTIMATELY.

23 Q. EARLIER YOU SAID IT WAS VOLVO'S DECISION. DO YOU RECALL

24 THAT?

25 A. I DON'T RECALL THAT. I THINK IT WAS, I THINK IT WAS

1 MS. CANNELLA'S QUESTION THAT SAID -- AND SHE MAY HAVE SAID THAT
2 WAS VOLVO'S DECISION.

3 Q. OKAY. DO YOU HAVE IN FRONT OF YOU, SIR, PLAINTIFF'S
4 HEARING EXHIBIT 74?

5 A. YES.

6 MR. SCRIBNER: YOUR HONOR, DO YOU HAVE THAT WITH YOU?

7 THE COURT: YES.

8 MR. SCRIBNER: THANK YOU.

9 BY MR. SCRIBNER:

10 Q. THERE WAS A DISCUSSION ABOUT THIS IS ONE OF THE RECENTLY
11 PRODUCED DOCUMENTS, CORRECT?

12 A. I BELIEVE SO, YES.

13 Q. NOW, NONE OF THIS SAYS MAZDA ON IT, CORRECT? IT TALKS
14 ABOUT CUSTOMER SPECIFICATIONS FOR A BMW, A ROVER AND AN OPEL,
15 CORRECT?

16 A. AGREED.

17 Q. AND YOU WOULD ALSO AGREE THAT WHEN YOU TAKE ISSUE WITH
18 THIS PARTICULAR DESIGN, YOU ARE NOT TAKING ISSUE WITH ANYTHING
19 ON THIS PAGE EXCEPT THAT PART THAT TALKS ABOUT LOAD LIMITERS;
20 ISN'T THAT TRUE?

21 A. YES.

22 Q. IN OTHER WORDS, YOU'VE NEVER CRITICIZED THE USE OF A LOAD
23 LIMITER, CORRECT?

24 A. CORRECT.

25 Q. YOU'VE NEVER CRITICIZED ANY OF THESE DRAWINGS, CORRECT?

1 A. CORRECT.

2 Q. CONCEPTUALLY, YOU DON'T HAVE A PROBLEM WITH THE LOAD

3 LIMITER, CORRECT?

4 A. CORRECT.

5 Q. AND WE CAN AGREE THAT THIS DOCUMENT SHOWS THAT AUTOLIV

6 WILL SUPPLY IT IN A TWO, THREE, AND A FOUR AND A HALF, CORRECT?

7 A. YES.

8 Q. AND THEN ULTIMATELY THE OEM MAKES ITS SELECTION, CORRECT?

9 A. PERHAPS IN SOME CASES. IN THIS CASE, OBVIOUSLY, AUTOLIV
10 HAD A WORKING ARRANGEMENT IN MAKING THAT DECISION.

11 Q. DID AUTOLIV MAKE THAT DECISION, SIR?

12 A. THEY MADE THE DECISION TO OFFER THE TWO-KILONEWTON, WHICH
13 I THINK IN AND OF ITSELF IS PROBLEMATIC. I THINK THAT'S WHERE
14 THEY WENT WRONG. THE TWO-KILONEWTON SHOULDN'T BE OFFERED FOR
15 ANY VEHICLE EVER.

16 Q. THANK YOU FOR THAT. JUST OFFERING IT IS A PROBLEM. BUT
17 YOU ARE NOT SUGGESTING THAT AUTOLIV MADE THE DECISION TO PUT A
18 TWO-KILONEWTON THRESHOLD INTO THE 2005 MAZDA, CORRECT?

19 A. WELL, WHAT I AM SAYING IS THEY DID MORE THAN OFFER IT.
20 THEY MANUFACTURED IT AND SOLD IT AND PROFITED FROM IT AND I
21 THINK THAT WAS UNREASONABLE. THAT IS A DEFECTIVE SEATBELT.

22 Q. CAN WE AGREE ON THIS: MAZDA HAS SMART ENGINEERS, CORRECT?

23 A. YES, I BELIEVE THEY DO.

24 Q. I DON'T HAVE AN ENGINEERING DEGREE AND I AM BARELY GOOD AT
25 MATH, BUT EVERYTHING THAT YOU JUST SAID ABOUT FORWARD MOVEMENT

1 AND EXCURSION, WE ALL UNDERSTAND IT, DO WE NOT?

2 A. YES, AS DOES AUTOLIV.

3 Q. AS DOES AUTOLIV. IN OTHER WORDS, IF YOU WANT TO REDUCE
4 THAT FORWARD EXCURSION, YOU CAN INCREASE THAT THRESHOLD,
5 CORRECT?

6 A. ABSOLUTELY.

7 Q. CAN WE AGREE THAT THE ENGINEERS AT MAZDA KNOW THAT BASIC
8 PRINCIPLE?

9 A. I WOULD ASSUME THAT THEY DO. I BELIEVE THEY --

10 Q. LET ME HAND YOU EXHIBIT 2, SIR.

11 MR. SCRIBNER: MAY I APPROACH?

12 THE COURT: YES, SIR.

13 BY MR. SCRIBNER:

14 Q. ARE YOU FAMILIAR WITH THESE DOCUMENTS?

15 A. I'M -- I'VE JUST REVIEWED THEM.

16 Q. SURE. TAKE YOUR TIME.

17 MR. BUTLER: JUST FOR THE RECORD THIS IS -- EXHIBIT 2
18 IS FOUR DIFFERENT MINUTES OF BUSINESS TEAM MEETINGS; IS THAT
19 RIGHT?

20 MR. SCRIBNER: YES, SIR, IT'S A COMPOSITE. I THOUGHT
21 I'D JUST PUT IT TOGETHER IN ONE EXHIBIT, YOUR HONOR.

22 THE COURT: FINE.

23 MR. BUTLER: THANK YOU.

24 THE WITNESS: I HAVE THEM.

25 BY MR. SCRIBNER:

1 Q. OKAY. AND THESE WERE DOCUMENTS PRODUCED LONG BEFORE JUDGE
2 DUFFEY ISSUED HIS SUMMARY JUDGMENT ORDER, TRUE?

3 A. I DON'T KNOW WHEN THESE WERE PRODUCED.

4 Q. I'LL MAKE THAT REPRESENTATION. I THINK WE ALL AGREE ON
5 THAT. I'LL PROVE THAT UP ANOTHER WAY. DON'T WORRY, WORRY
6 ABOUT THAT.

7 DO YOU RECALL LOOKING AT THESE DOCUMENTS BEFORE YOU
8 ISSUED YOUR REPORT THAT WE IDENTIFIED AS EXHIBIT 1?

9 A. I DON'T RECALL ONE WAY OR THE OTHER AS I SIT HERE.

10 Q. OKAY. WELL, LET'S DO THIS, BECAUSE YOU TALKED WITH
11 MS. CANNELLA ABOUT THE VARIOUS ITERATIONS OF THIS PARTICULAR
12 LOAD LIMITER AND YOU KNOW A LOT ABOUT THE DETAILS OF THAT,
13 CORRECT?

14 A. I DO.

15 Q. AND SO IF YOU LOOK AT APRIL 2002, THIS BUSINESS TEAM
16 UPDATE, IT SAYS: "MAZDA REQUESTED A QUOTE FOR THE AGB101RPLL
17 AND STATIC BUCKLE TO SUBSTITUTE THE CURRENT R27LL AND BUCKLE
18 PRETENSIONER." DO YOU SEE THAT?

19 A. YES.

20 MR. SCRIBNER: FOR THE RECORD, YOUR HONOR, THAT
21 HIGHLIGHTING IS NOT IN THE ORIGINAL. THAT'S OURS. ALL OF THE
22 HIGHLIGHTING IN THESE DOCUMENTS WE DID AT MY LAW FIRM.

23 THE COURT: ALL RIGHT. THANK YOU.

24 BY MR. SCRIBNER:

25 Q. JUST SO THE COURT UNDERSTANDS, THIS IS MAZDA REQUESTING A

1 QUOTE FOR THE LOAD LIMITER THAT THEY USED IN THE 2006 MAZDA3,
2 CORRECT?

3 A. YES.

4 Q. AND THAT'S BACK IN 2002, LONG BEFORE THE 2005 OR 2006 WERE
5 BEING MANUFACTURED, CORRECT?

6 A. YES.

7 Q. ALL RIGHT. NEXT BUSINESS TEAM MEETING. NOW WE ARE MOVING
8 FORWARD TO SEPTEMBER OF 2002. IT SAYS "R200RPLL." DO YOU SEE
9 THAT?

10 A. YES.

11 Q. ONCE AGAIN, THAT'S WHAT THEY ULTIMATELY USE IN THE 2006
12 MAZDA3, CORRECT?

13 A. AGREED.

14 Q. IT SAYS: "MAZDA HAS ALMOST DECIDED NOT TO CHANGE TO THE
15 ROTO PRETENSIONER." DO YOU SEE THAT?

16 A. YES.

17 Q. AND IT SAYS: "BUT THE FINAL DECISION HAS NOT BEEN MADE
18 YET. MAZDA ARE AWARE THAT TIMING WOULD BE CRITICAL AND THAT
19 THE INVESTMENTS FOR THE BUCKLE PRETENSIONER WERE MADE." DO YOU
20 SEE THAT?

21 A. YES.

22 Q. CAN WE AGREE, SINCE IT SEEMS LIKE YOU ARE OPINING ABOUT
23 WHO IS MAKING VARIOUS DECISIONS, THAT LOOKS LIKE MAZDA IS GOING
24 TO MAKE THE DECISION HERE? CAN WE AGREE ON THAT?

25 A. THEY CERTAINLY ARE HAVING A VOTE, YES.

1 Q. WELL, THEY ARE HAVING MORE THAN A VOTE. IT'S SAYING THEY
2 HAVEN'T DECIDED YET, A DECISION HASN'T BEEN MADE. THAT'S
3 MAZDA'S DECISION. CAN WE AGREE ON THAT?

4 A. YES.

5 Q. ALL RIGHT. THIRD REPORT, PLEASE.

6 ONCE AGAIN, THIS IS OCTOBER OF 2002 AND MAZDA IS
7 TALKING ABOUT THE LOAD LIMITER THAT THEY ULTIMATELY USE FOR THE
8 2006 MAZDA3, CORRECT?

9 A. YES.

10 Q. "MAZDA HAS NOT ANNOUNCED THE FORMAL DECISION YET." DO YOU
11 SEE THAT?

12 A. YES.

13 Q. DOES THAT SUGGEST TO YOU THAT AUTOLIV IS MAKING THAT
14 DECISION IN ANY WAY? DOES THAT SENTENCE SAY ANYTHING LIKE
15 THAT?

16 A. YOU READ IT RIGHT.

17 Q. OKAY. "MAZDA TESTING GROUP IS STILL CONSIDERING
18 IMPROVEMENTS FOR U.S. PERFORMANCE." DO YOU SEE THAT?

19 A. YES.

20 Q. AND THAT TESTING IS THE KIND OF TESTING YOU TOLD THE JUDGE
21 ABOUT WHERE YOU ARE SMASHING THAT THING INTO THE WALL AT 35
22 MILES AN HOUR, RIGHT?

23 A. YES.

24 Q. AND IT SAYS: "JUST RECENTLY, THEY HAVE ASKED US FOR
25 DIGRESSIVE LOAD LIMITERS." DO YOU SEE THAT?

1 A. YES.

2 Q. THE "THEY" IS MAZDA, CORRECT?

3 A. YES.

4 Q. THE "US" IS AUTOLIV, CORRECT?

5 A. YES.

6 Q. THIS CERTAINLY SUGGESTS THAT MAZDA IS INTERESTED IN THE
7 DIGRESSIVE LOAD LIMITER, CORRECT?

8 A. AGREED.

9 Q. LAST REPORT, SIR.

10 MR. SCRIBNER: SORRY, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 BY MR. SCRIBNER:

13 Q. NOVEMBER 2002. I BELIEVE THIS IS ONE YOU COVERED WITH
14 MS. CANNELLA. MAZDA HAVING DIFFICULTIES TO ACHIEVE THEIR U.S.
15 NCAP TARGETS WITH THE CURRENT RESTRAINT SYSTEMS.

16 DO YOU SEE THAT?

17 A. YES.

18 Q. AND THE U.S. NCAP TARGETS ARE THE TARGETS THAT WE WERE
19 TALKING ABOUT WITH THE 35-MILE-AN-HOUR TEST, CORRECT?

20 A. AGREED.

21 Q. MAZDA WANTS TO DO BETTER ON THOSE TESTS. DO YOU SEE THAT?

22 A. I DO.

23 Q. AND IT SAYS "THEY." CAN WE AGREE THAT "THEY" MEANS MAZDA?

24 A. YES.

25 Q. MAZDA INTENDS TO CHANGE TO HIGHER LOAD LEVEL, IMPLEMENT

1 DIGRESSIVE LOAD LIMITERS OR RETRACTOR PRETENSIONERS INSTEAD OF
2 R27LL. DO YOU SEE THAT?

3 A. YES.

4 Q. FOR THE COURT'S KNOWLEDGE THE R27LL IS WHAT WENT INTO THE
5 2005 MAZDA3, CORRECT?

6 A. YES.

7 Q. AND SO THEY ARE TALKING ABOUT CHANGING THAT IN NOVEMBER OF
8 2002, CORRECT?

9 A. AGREED.

10 Q. TIMING AND COSTS WERE SUBMITTED. MAZDA STILL HAVE NOT
11 COME TO A DECISION. DO YOU SEE THAT?

12 A. YES.

13 Q. SO LET ME CONCLUDE WITH THIS: THE NOTION THAT A HIGHER
14 THRESHOLD LOAD LIMITER IS NOTHING NEW TO THE ENGINEERS AT
15 MAZDA, CORRECT?

16 A. I THINK THAT'S FAIR.

17 Q. AND WE CAN AGREE, AS DR. Z TOLD ME WHEN I DEPOSED HIM,
18 THAT STOPS HAVE BEEN AROUND SINCE THE 1980'S; ISN'T THAT RIGHT?

19 A. YES.

20 Q. AND MAZDA IS AWARE OF THOSE?

21 A. YES.

22 Q. AND CAN WE AGREE THAT AS OF NOVEMBER 2002, MAZDA IS TRYING
23 TO FIGURE OUT WHAT KIND OF LOAD LIMITER THEY ARE GOING TO USE?

24 A. THAT SUGGESTS THEY ARE DOING IT BY THEMSELVES, BUT
25 CERTAINLY THEY ARE INVOLVED IN THE PROCESS AS IS AUTOLIV.

1 Q. DID THESE DOCUMENTS HAVE ANY IMPORTANCE TO YOU WHEN YOU
2 ISSUED YOUR REPORT?

3 A. YES.

4 Q. WELL, I THOUGHT YOU SAID YOU WEREN'T SURE IF YOU EVEN
5 REVIEWED THEM.

6 A. ASSUMING I DID, THEY WOULD HAVE.

7 Q. WELL, DID YOU REVIEW THEM OR NOT?

8 A. I DON'T RECALL AS I SIT HERE. I JUST -- I JUST DON'T
9 RECALL.

10 Q. OKAY. YOU DON'T RECALL.

11 A. I MEAN THAT WAS 2015. I'M SORRY. I DON'T RECALL.

12 Q. YOU DON'T RECALL IF YOU'VE SEEN THEM. CAN WE AGREE IF YOU
13 DON'T RECALL SEEING THEM, THEY CERTAINLY DIDN'T TAKE ON THE
14 TYPE OF IMPORTANCE THAT WOULD ALTER OPINIONS IN YOUR REPORT?

15 A. I'M NOT SURE I UNDERSTAND THAT QUESTION.

16 Q. LET ME ASK A BETTER QUESTION. THAT WAS A BAD ONE.

17 IF THESE DOCUMENTS WERE IMPORTANT, YOU WOULD REMEMBER
18 THEM, TRUE?

19 A. THEY ARE CONSISTENT WITH THE DOCUMENTS WE TALKED ABOUT
20 AND, THAT IS, THOSE TWO COMPANIES ARE COMMUNICATING. YOUR
21 FOCUS IS ON MAZDA AND I APPRECIATE THOSE ARE THE SECTIONS THAT
22 YOU HAVE HIGHLIGHTED, BUT THEY ARE COMMUNICATING BACK AND
23 FORTH. AND REMEMBER THAT, YOU KNOW, THE CHANGE OF --

24 THE COURT: WELL, I NEED AN ANSWER TO HIS QUESTION
25 AND THEN YOU CAN EXPLAIN. IF THOSE DOCUMENTS WERE IMPORTANT,

1 WOULD YOU REMEMBER REVIEWING THEM?

2 THE WITNESS: YOUR HONOR, I DON'T KNOW. I MEAN THE
3 DOCUMENTS THAT ARE REVIEWED BEFORE THOSE REPORTS ARE VOLUMINOUS
4 AND THE DISCOVERY TYPICALLY COMES IN LITERALLY ON HUGE HARD
5 DRIVES, MEGABYTES AND SOMETIMES TERABYTES. AND A LOT OF THEM
6 ARE NOT IMPORTANT. SOME OF THEM ARE. AND I REVIEW A LOT OF
7 THEM.

8 WE ATTEMPT AND DO OUR BEST TO IDENTIFY THOSE THAT ARE
9 IMPORTANT AND THIS IS NOT -- I AM NOT SUGGESTING AND I WOULD
10 NOT SUGGEST TO THE COURT THAT I DID NOT SEE THOSE OR IF I DID
11 SEE THEM THAT THEY WOULDN'T BE IMPORTANT.

12 THIS IS DESCRIBING A COOPERATIVE RELATIONSHIP BETWEEN
13 THOSE TWO COMPANIES ON THE DESIGN PROCESS AS DID THE STATEMENT
14 OF WORK AND AS DID THE OTHER CONTRACTABLE DOCUMENT WE LOOKED
15 AT. AND THIS IS PART AND PARCEL OF THE SAME AND CONSISTENT
16 WITH THOSE. SO IT WOULDN'T SURPRISE ME THAT I LOOKED AT THOSE,
17 AND IF I DID, THEY WOULD HAVE BEEN IMPORTANT FOR THE SAME
18 REASONS AS THOSE OTHER DOCUMENTS ARE AND THE CONCLUSION IS THEY
19 ARE WORKING TOGETHER. THAT'S NOT ALWAYS THE CASE AND THAT
20 WAS --

21 THE COURT: I CUT YOU OFF. I CUT YOU OFF FROM YOUR
22 ANSWER. YOU CAN FINISH YOUR PREVIOUS ANSWER.

23 THE WITNESS: I THINK I HAVE JUST DONE IT ALL. I
24 THINK I HAVE JUST WORKED IT OUT. BUT THAT IS THE POINT. I
25 MEAN IT IS A COOPERATIVE RELATIONSHIP AND THESE DOCUMENTS ARE

1 FOCUSED ON MAZDA BEING INVOLVED AND THERE CLEARLY IS DOCUMENTS
2 THAT SUPPORT AUTOLIV BEING INVOLVED. AND WHAT OCCURS TO ME IS
3 THAT BACK IN '01, BEFORE THESE MEETINGS, ARE THE VA/VE
4 DOCUMENTS THAT APPARENTLY ARE SUGGESTING A CHANGE FROM A
5 DIGRESSIVE DOWN TO A STANDARD LOAD LIMITER WHICH ULTIMATELY
6 THEY KEPT. AND THAT WAS AUTOLIV'S SUGGESTION BEFORE THESE
7 MEETINGS EVEN OCCURRED.

8 SO I MEAN ARE THEY LOOKING AT THE PRICE PROPOSALS? I
9 ASSUME AND BELIEVE THEY ARE. BUT, AT ANY RATE, I AM NOT
10 SUGGESTING THAT I DIDN'T LOOK AT THEM, AND IF I DID, THEY WOULD
11 HAVE BEEN IMPORTANT FOR THESE SAME REASONS. ALL I AM, ALL I AM
12 SAYING IS TO BE CAUTIOUS, AS I SIT HERE TODAY, I JUST DON'T
13 RECALL THEM SPECIFICALLY.

14 THE COURT: OKAY.

15 BY MR. SCRIBNER:

16 Q. THANK YOU, MR. MEYER.

17 AFTER THE DOCUMENTS WERE PRODUCED RECENTLY THE
18 PLAINTIFF'S LAWYERS TOOK THE DEPOSITION OF MR. KAMEI. DID YOU
19 REVIEW THAT DEPOSITION?

20 A. I DON'T RECALL IT. WHO IS HE?

21 Q. HE IS THE LEAD SYSTEM ENGINEER FOR AUTOLIV FOR THIS
22 PARTICULAR SEATBELT.

23 DID YOU REVIEW THAT DEPOSITION, SIR?

24 A. I DON'T RECALL IT. IF I DID BEFORE THE REPORTS, I
25 PROBABLY WOULD HAVE MADE A NOTE OF IT. DID I?

1 Q. I DIDN'T SEE IT IN YOUR NOTES.

2 A. I DON'T RECALL THAT.

3 Q. SO HIS TESTIMONY ABOUT WHAT ALL THOSE DOCUMENTS MEAN, YOU
4 HAVEN'T READ THAT?

5 MS. CANNELLA: OBJECTION, YOUR HONOR.

6 THE COURT: HOLD ON.

7 MS. CANNELLA: OBJECTION, YOUR HONOR. THE QUESTION
8 MISSTATES THE EVIDENCE OF MR. KAMEI'S DEPOSITION. HE DID NOT
9 EXPLAIN THE MEANING OF ALL THE DOCUMENTS. IF THERE IS SPECIFIC
10 TESTIMONY HE WANTS TO ASK HIM ABOUT THEM --

11 THE COURT: WELL, I AM GOING TO ALLOW HIM TO ASK THAT
12 QUESTION. I AM GOING TO OVERRULE THE OBJECTION.

13 THE WITNESS: I DON'T RECALL REVIEWING THAT
14 DEPOSITION.

15 BY MR. SCRIBNER:

16 Q. DIDN'T YOU WANT TO SEE THE TESTIMONY OF THE LEAD ENGINEER
17 FOR AUTOLIV TO ANSWER QUESTIONS ABOUT AUTOLIV'S INVOLVEMENT?

18 A. I WOULD HAVE REVIEWED IT, YES.

19 Q. YOU DID REVIEW IT?

20 A. I DON'T RECALL REVIEWING IT.

21 Q. DO YOU RECALL HIM TESTIFYING IN NO UNCERTAIN TERMS THAT AT
22 THE BEGINNING OF PRODUCT DEVELOPMENT, HE PROVIDED MAZDA WITH A
23 LOW LOAD LIMITER, A MEDIUM LOAD LIMITER AND A HIGH LOAD LIMITER
24 AND THAT MAZDA DID THEIR TESTING AND CAME BACK AND SAID WE WANT
25 THE TWO-KILONEWTON? DID YOU SEE THAT TESTIMONY?

1 A. I DON'T RECALL THAT.

2 Q. WOULD THAT BE IMPORTANT TO YOU IF HE SAID THAT?

3 A. AS TO MAZDA'S CONDUCT? MAYBE. AS TO AUTOLIV'S? AS I
4 SAID, I BELIEVE AUTOLIV SHOULD HAVE KNOWN BETTER THAN TO SELL
5 THIS RETRACTOR TO ANYBODY FOR ANY CAR WHETHER THEY AGREED TO DO
6 IT OR NOT. AUTOLIV HAS DONE SOME TESTING TOO. AUTOLIV IS WELL
7 AWARE OF WHAT THIS THING IS GOING TO DO. AUTOLIV IS AWARE OF
8 THAT. AND TO SELL IT OR PUT IT IN ANY CAR, THERE IS NO CAR ON
9 THE ROAD TODAY EVER THAT WOULD JUSTIFY THIS.

10 SO IF MAZDA MADE THAT DECISION, THEN FINE, MAZDA MADE
11 THAT DECISION, BUT THAT DOESN'T MEAN THAT I DON'T HAVE THE SAME
12 OPINIONS WITH RESPECT TO AUTOLIV, WHICH IS AUTOLIV'S -- THIS IS
13 AUTOLIV'S RETRACTOR. THEY DESIGNED IT, THEY MANUFACTURED IT,
14 AND THEY SOLD IT AND PUT IT IN THE MARKET.

15 Q. HAVE YOU REVIEWED THE TESTIMONY FROM MAZDA THAT SAYS THAT
16 ALL DECISIONS REGARDING OCCUPANT SAFETY FOR THE 2005 MAZDA3
17 WERE MADE SOLELY BY MAZDA? HAVE YOU REVIEWED THAT TESTIMONY?

18 A. MAYBE.

19 MS. CANNELLA: OBJECTION, YOUR HONOR.

20 THE COURT: HOLD ON; HOLD ON; HOLD ON.

21 THE WITNESS: MAYBE.

22 MS. CANNELLA: SORRY. OBJECTION, YOUR HONOR. IT'S
23 NOT CLEAR WHAT TESTIMONY HE IS ASKING ABOUT, SO IF HE COULD
24 SPECIFY THE TESTIMONY.

25 THE COURT: THAT'S FAIR; THAT'S FAIR.

1 MS. CANNELLA: AND ACTUALLY --

2 THE WITNESS: THAT WOULD BE A MAYBE, THAT STATEMENT.

3 THE COURT: HOLD ON; HOLD ON; HOLD ON.

4 THE WITNESS: I'M SORRY.

5 THE COURT: LET MS. CANNELLA FINISH.

6 MS. CANNELLA: THERE WERE NO MAZDA ENGINEERING

7 DEPOSITIONS IN THE CASE.

8 THE COURT: I AGREE WITH HER. I WILL SUSTAIN THAT

9 OBJECTION. REPHRASE IT OR MAKE IT MORE SPECIFIC.

10 MR. SCRIBNER: SURE.

11 BY MR. SCRIBNER:

12 Q. HAVE YOU REVIEWED THE DECLARATION THAT MAZDA SUBMITTED

13 THAT JUDGE DUFFEY RELIED ON IN ISSUING HIS ORDER?

14 A. I DID REVIEW THAT DECLARATION. I HAVEN'T REVIEWED IT

15 RECENTLY, AND IF YOU HAVE IT, WE CAN LOOK AT IT, AND I HAVE

16 REVIEWED IT.

17 Q. SO YOU DID REVIEW THAT TESTIMONY FROM MAZDA?

18 A. YES.

19 Q. AND YOU ARE NOT SURE IF YOU REVIEWED MR. KAMEI'S

20 DEPOSITION?

21 A. I JUST DON'T RECALL THAT AS I SIT HERE.

22 Q. DO YOU WANT TO REVIEW IT?

23 A. I'M CURIOUS NOW.

24 MR. SCRIBNER: THAT'S ALL I HAVE. THANK YOU.

25 THE COURT: THANK YOU.

1 MS. CANNELLA, I WOULD REALLY LIKE FOR YOU TO DO
2 REDIRECT, BUT I ATE BREAKFAST ABOUT FIVE HOURS AGO AND I THINK
3 JUST ABOUT EVERYBODY -- I KNOW YOU WANT TO GET THIS GENTLEMAN
4 OUT OF HERE AND BACK ON THE AIRPLANE. HOW LONG WILL YOUR
5 REDIRECT BE?

6 MS. CANNELLA: YOUR HONOR, NOT LONG BUT WE ARE HAPPY
7 TO TAKE A BREAK. HE'S GOT PLENTY OF TIME BEFORE HIS FLIGHT.

8 THE COURT: I'M TEMPTED WHEN YOU SAY "NOT LONG," BUT
9 MY EXPERIENCE SAYS --

10 MS. CANNELLA: FIVE MINUTES, YOUR HONOR?

11 THE COURT: GO AHEAD.

12 THE WITNESS: MINE TOO, YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MS. CANNELLA:

15 Q. HI, MR. MEYER.

16 A. HI.

17 Q. YOU TOLD MR. SCRIBNER AUTOLIV MADE THE DECISION TO OFFER
18 THIS SEATBELT WITH A TWO-KILONEWTON LOAD LIMITER AND THAT
19 SHOULD NOT HAVE BEEN OFFERED AT ALL; IS THAT RIGHT?

20 A. YES.

21 Q. YOU SAID THAT THAT TWO-KILONEWTON TORSION BAR WAS
22 DEFECTIVE?

23 A. ABSOLUTELY.

24 Q. THAT'S THE WHOLE POINT, ISN'T IT?

25 A. I THINK SO.

1 Q. WAS THERE ANY REASON AT ALL TO ALLOW THIS MUCH SPOOL-OUT,
2 AS MUCH SPOOL-OUT AS WE SEE IN MR. ANDREWS' CAR OR IN THIS NCAP
3 TEST?

4 A. NO, AND I CONSIDERED THAT QUESTION CAREFULLY BEFORE I
5 CONCLUDED THAT, BUT ABSOLUTELY NOT, NO.

6 Q. WHO IS THE SEATBELT EXPERT IN THIS CASE?

7 A. AUTOLIV. IT'S THE BUSINESS THEY ARE IN.

8 Q. AS BETWEEN MAZDA AND AUTOLIV, WHICH ONE KNOWS MORE ABOUT
9 SEATBELTS?

10 MR. SCRIBNER: OBJECT TO THE FORM OF THAT QUESTION,
11 YOUR HONOR. THAT'S PURE SPECULATION AS TO WHAT AUTOLIV KNOWS
12 AND WHAT MAZDA KNOWS.

13 THE COURT: I THINK YOU NEED TO REPHRASE THAT ONE,
14 MS. CANNELLA. I'LL SUSTAIN THAT.

15 MS. CANNELLA: YES, YOUR HONOR.

16 BY MS. CANNELLA:

17 Q. WHAT IS AUTOLIV'S BUSINESS?

18 A. AUTOLIV IS IN THE SEATBELT RESTRAINT BUSINESS WHICH IS WHY
19 MAZDA CONTRACTS WITH THEM FOR THESE COMPONENTS.

20 Q. AND WHO DESIGNED THE SEATBELT?

21 A. AUTOLIV.

22 Q. AND WHO MANUFACTURED THE SEATBELT?

23 A. AUTOLIV.

24 Q. AND WHO SOLD THE SEATBELT?

25 A. AUTOLIV.

1 Q. AND WHO PROFITED FROM THIS SEATBELT?

2 A. AUTOLIV.

3 Q. I WANT TO CLEAR UP ONE MORE THING JUST BECAUSE I THINK IT
4 WAS CONFUSING.

5 PLAINTIFF'S HEARING EXHIBIT 49, WHICH IS TOLLGATE-4
6 THAT YOU HAVE IN YOUR BOOK.

7 A. RIGHT.

8 Q. WHAT'S THE DATE ON THAT?

9 A. WELL, THE DATE ON THE PAGE THAT WE WERE REFERRING TO WAS
10 2001. THE DATE ON THE DOCUMENT ITSELF IS 2003.

11 Q. 2003?

12 A. YES. I'M SORRY. YES. 2003, NOVEMBER 18.

13 Q. NOVEMBER 18TH, 2003?

14 A. YES. THAT'S THE DATE ON THE DOCUMENT, EXHIBIT 49.

15 Q. ONE OF DOCUMENTS IN MR. SCRIBNER'S EXHIBIT --

16 MS. CANNELLA: I BELIEVE IT WAS 2?

17 MR. SCRIBNER: YES, MA'AM.

18 BY MS. CANNELLA:

19 Q. (CONTINUING) -- IN DEFENDANT'S EXHIBIT 2 WAS AN OCTOBER
20 OF 2002 BUSINESS MEETING?

21 A. YES.

22 Q. AND THAT IS THE BUSINESS MEETING THAT SAYS: JUST
23 RECENTLY, THEY, BEING MAZDA, HAVE ASKED US FOR DIGRESSIVE LOAD
24 LIMITERS.

25 DID I READ THAT CORRECTLY?

1 A. YES.

2 Q. SO THAT HAPPENS IN OCTOBER 2002. A YEAR LATER WE HAVE
3 PLAINTIFF'S EXHIBIT 49, WHICH IS NOVEMBER 18, 2003, AND THAT IS
4 WHEN AUTOLIV SUGGESTS TO MAZDA TO MOVE FROM A MORE ROBUST,
5 DIGRESSIVE LOAD LIMITER TO THE WEAKER TWO-KILONEWTON LOAD
6 LIMITER?

7 A. THAT IS THE TIMELINE, YES.

8 Q. OKAY. SO MAZDA WANTS DIGRESSIVE. AUTOLIV BACKS THEM OFF.
9 IS THAT FAIR?

10 A. YES, THAT'S FAIR.

11 MS. CANNELLA: THAT'S ALL I HAVE.

12 THE COURT: RE CROSS, MR. SCRIBNER?

13 MR. SCRIBNER: NOTHING, YOUR HONOR. THANK YOU.

14 THE COURT: MS. CANNELLA, ANY OBJECTION TO THE TWO
15 EXHIBITS OFFERED BY MR. SCRIBNER?

16 MS. CANNELLA: NO, YOUR HONOR.

17 THE COURT: THEY ARE ADMITTED WITHOUT OBJECTION.

18 WE WILL BREAK HERE FOR LUNCH AND START BACK AT 1:30.

19 MR. SCRIBNER: YOUR HONOR, MAY I ASK IN TERMS OF
20 TIMING, WE DO HAVE A DAUBERT MOTION ON MR. MEYER. I DON'T
21 THINK IT REALLY HAD A LOT TO DO WITH HIS TESTIMONY. IT'S
22 BIOMECHANIC ISSUES. COULD WE TAKE THAT UP? GIVEN THAT YOU
23 HAVE JUST HEARD ALL THIS TESTIMONY, IT WOULD BE THE RIGHT TIME
24 TO DO IT AFTER LUNCH.

25 THE COURT: LET'S DO IT RIGHT AFTER LUNCH.

1 MR. SCRIBNER: THANK YOU.

2 THE COURT: EVERYBODY HAVE A GOOD LUNCH. I WOULD
3 SUGGEST THE CAFETERIA, BUT -- YOU KNOW.

4 MR. BUTLER: 1:30 DID YOU SAY?

5 THE COURT: 1:30.

6 MR. BUTLER: THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 (NOON RECESS)

9 MS. CANNELLA? WELL, HOLD ON A SECOND. LET'S GIVE
10 MR. BUTLER TIME TO GET UP HERE. I'M A LITTLE BIT EARLY.

11 MS. CANNELLA: THAT'S ALL RIGHT. WE'RE HERE.

12 THE COURT: I APPRECIATE IT.

13 MR. SCRIBNER?

14 MR. SCRIBNER: YES. I THINK WE WERE GOING TO PROCEED
15 WITH THE DAUBERT MOTION ON MR. MEYER'S DEPLOYMENT THRESHOLD.

16 THE COURT: CORRECT.

17 MR. SCRIBNER: SO I'LL START WITH THE FACT THAT WHEN
18 WE FILED THESE DAUBERT MOTIONS, THE PARTIES HAD NOT YET AGREED
19 TO A BENCH TRIAL. AND SO THE FACT IS IT'S A RELAXED STANDARD
20 WHEN WE ARE TALKING ABOUT DAUBERT IN A BENCH TRIAL FOR OBVIOUS
21 REASONS.

22 AND WE FILED THREE DAUBERT MOTIONS AND I WILL CONCEDE
23 THAT THE OTHER TWO ARE MORE OF THE TYPE THAT THE COURT'S JUST
24 GOING TO HAVE TO EXERCISE ITS DISCRETION AND FIGURE OUT WHETHER
25 TO GRANT THE MOTION. THIS ONE WE FEEL A LITTLE BIT DIFFERENTLY

1 ABOUT BECAUSE IT'S SO SUBSTANTIVELY AT THE HEART OF THE MERITS
2 THAT, WHILE RECOGNIZING THAT IT IS A RELAXED STANDARD, WE STILL
3 FEEL LIKE THIS ONE WITHOUT A DOUBT IS APPROPRIATE.

4 MR. MEYER TESTIFIED FOR ABOUT TWO HOURS. HE NEVER
5 ADDRESSED THE CONCERN THAT WE HAVE WITH HIS OPINION. AND WE
6 DISAGREE. I DON'T WANT TO LEAVE THE COURT WITH THE NOTION THAT
7 WE DON'T DISAGREE WITH A LOT OF WHAT HE SAID. THERE ARE SOME
8 THINGS WE ACTUALLY AGREE WITH. BUT RATHER THAN, YOU KNOW, TAKE
9 A DISCOVERY DEPOSITION, I THOUGHT I WOULD JUST GET TO THE
10 LICK-LOG. BUT I DON'T WANT THE COURT TO THINK THAT WE AGREE
11 WITH A LOT OF IT.

12 THE COURT: WELL, I NEVER THOUGHT THAT.

13 MR. SCRIBNER: ALL RIGHT, ALL RIGHT.

14 SO LET ME GET SOME BASIC FACTS OUT THERE BECAUSE I
15 THINK THEY ARE IMPORTANT.

16 ON APRIL 12, 2013, MR. ANDREWS DROVE HIS 2005 MAZDA3
17 OFF THE ROAD WHILE TRAVELING 75 MILES AN HOUR IN A SINGLE
18 VEHICLE ACCIDENT. THIS WILL BE THE LAST TIME I DO THIS, BUT
19 MR. MEYER SAID IT WAS BECAUSE OF THIS TURTLE. WELL, YOU KNOW,
20 THE COBB COUNTY POLICE DEPARTMENT SAID IT HAS NOTHING TO DO
21 WITH A TURTLE. IT WAS JUST CLEAR DRIVER ERROR. WE JUST
22 DISAGREE. AND I AM NOT GOING TO DO THAT EVERY TIME IN AN
23 EFFORT TO BE EFFICIENT WITH THE TIME, BUT THAT WOULD BE ONE
24 PARTICULAR AREA WHERE WE DISAGREE.

25 THE AIRBAG DID NOT DEPLOY DESPITE THE FACT THAT IT

1 SHOULD DEPLOY WITHOUT A DOUBT IN A VEHICLE ACCIDENT WHERE YOU
2 HAVE A 35-MILE-AN-HOUR DELTA V, THEY CALL IT.

3 AUTOLIV JAPAN SUPPLIED MAZDA WITH THE AIRBAG MODULE,
4 WHICH IS JUST A FANCY WAY OF SAYING THE BAG, AND THE SEATBELT
5 ASSEMBLY. AND LAST MONTH WE TOOK THE TRIAL DEPOSITION OF
6 MR. CARUSO, WHO IS PLAINTIFF'S AIRBAG EXPERT, HIGHLY
7 CREDENTIALIAED IN THE FIELD OF AIRBAG DEPLOYMENT, AND HE SAID IN
8 NO UNCERTAIN TERMS THAT THE AIRBAG ITSELF WAS READY TO GO. IT
9 WAS READY TO DO ITS JOB.

10 AUTOLIV'S AIRBAG WAS DEPRIVED OF ITS OPPORTUNITY TO
11 DO ITS JOB BECAUSE, ACCORDING TO MR. CARUSO, THE SIGNAL TO
12 DEPLOY WAS NOT SENT. IN OTHER WORDS, WHEN YOU HAVE AN
13 ACCIDENT, JUDGE, YOU ARE STOPPING SO QUICKLY THERE IS A SENSOR
14 IN YOUR VEHICLE THAT SAYS DEPLOY.

15 THE COURT: YES.

16 MR. SCRIBNER: AND IT HAS TO HAPPEN NOW. ACCORDING
17 TO MR. CARUSO, HE SAYS, LOOK, THERE ARE EIGHT DIFFERENT WAYS
18 THAT THIS DESIGN COULD BE BETTER. ONE EASY WAY TO MAKE IT
19 BETTER IS TO HAVE TWO SENSORS. BECAUSE THEY DON'T COST
20 ANYTHING. IN FACT, I THINK HE TOLD ME THEY COST \$5. HE SAID,
21 PUT TWO IN THERE, BECAUSE IF ONE IS, YOU KNOW, DISLODGED, THE
22 OTHER ONE IS GOING TO SEND THAT SIGNAL, THAT AIRBAG IS GOING TO
23 DEPLOY, AND EVERYONE AGREES THAT HE WOULD BE ALIVE TODAY,
24 MR. ANDREWS WOULD BE ALIVE TODAY. IF OUR AIRBAG HAD THE
25 OPPORTUNITY TO WORK WITH OUR SEATBELT, HE WOULD BE ALIVE TODAY.

1 IN MODERN DESIGN, AND I THINK YOU ARE CATCHING ON TO
2 AT LEAST OUR THEME OF THE CASE, AIRBAGS AND SEATBELTS WORK
3 TOGETHER. THE FEDERAL GOVERNMENT REQUIRES THE TESTING TO
4 INCLUDE BOTH AN AIRBAG AND A SEATBELT. AND ALL AIRBAGS ARE --
5 STRIKE THAT. ALL SEATBELTS TODAY HAVE THESE LOAD LIMITERS THAT
6 MR. MEYER TALKED ABOUT. AND THE REASON WHY THEY HAVE THESE
7 LOAD LIMITERS -- AND MR. MEYER IS MOSTLY, IN OUR VIEW, RIGHT IN
8 THAT YOU WANT THAT FORWARD EXCURSION. YOU WANT THAT FORWARD
9 MOVEMENT.

10 IN THE GOOD OLD DAYS BACK IN THE 1980'S, SEATBELTS
11 WOULD JUST KEEP YOU IN YOUR PLACE AND YOU REALLY, REALLY WOULD
12 HAVE A PROBLEM IN A HIGH-SPEED ACCIDENT. AND WHAT HE WAS
13 SAYING -- I SAID I WASN'T GOING TO TALK ABOUT WHERE WE
14 DISAGREE, BUT THIS IS JUST GOING TO BE ANOTHER ONE I HAVE TO --
15 YOU KNOW, BRUISING TO THE CHEST, NO. OUR EXPERTS SAY IF YOU
16 HAVE A HIGH-SPEED ACCIDENT AND YOU DON'T HAVE ENOUGH FORWARD
17 MOVEMENT, IT CAN CRACK YOUR STERNUM. IT CAN KILL YOU.

18 THE COURT: I'VE HEARD OF THAT.

19 MR. SCRIBNER: AND SO THE ISSUES THAT VOLVO AND MAZDA
20 AND ALL THESE AUTOMOBILE MANUFACTURERS THAT ARE DEALING WITH
21 THESE ISSUES, HOW MUCH, HOW MUCH MOVEMENT DO WE WANT? HOW MUCH
22 RESTRAINT DO WE WANT? BECAUSE TO COMPLICATE THINGS FURTHER,
23 YOU ASKED A GREAT QUESTION: HOW BIG DOES THE PERSON HAVE TO
24 BE?

25 YOU KNOW, I HAVE A DAUGHTER WHO IS OLD ENOUGH NOT TO

1 HAVE, YOU KNOW, A CHILD SEAT, BUT SHE IS SMALL-STATURED. AND
2 SO WHEN THEY HOLD HER IN PLACE, THE LIKELIHOOD THAT SHE HAS
3 INJURIES VERSUS THE LIKELIHOOD THAT A GROWN MAN LIKE ME HAS
4 INJURIES, WAY HIGH. IT'S COMPLICATED. IT'S JUST REALLY
5 COMPLICATED. AND I THINK WHAT MR. MEYER SAID THAT I DO AGREE
6 WITH IS, YOU KNOW -- I SHOULDN'T SAY THAT HE SAID THIS, BUT HE
7 CERTAINLY SUGGESTED IT -- ULTIMATELY THE DECISION LIES WITH THE
8 OEM AND THAT'S BECAUSE THERE ARE SO MANY PARTS THAT CAN IMPACT
9 OCCUPANT SAFETY.

10 WE HAVE BEEN TALKING ABOUT AIRBAG AND SEATBELT. IT'S
11 THE VEHICLE. IT'S THE BUMPER. IT'S THE STEERING WHEEL. IT'S
12 THE SEAT. ALL OF IT. AND YOU CHANGE ONE LITTLE THING AND IT
13 CAN THROW EVERYTHING OUT OF WHACK, WHICH IS WHY YOU'LL HEAR
14 TESTIMONY FROM OUR EXPERTS THAT SUPPLIERS ANSWER QUESTIONS,
15 MAKE SUGGESTIONS, BUT ULTIMATELY THEY GIVE IT TO THE OEM. THEY
16 CRASH IT INTO A WALL. THEY RECORD THE RESULTS AND THEY SAY
17 THIS IS WHAT WE WANT, BECAUSE IT'S OUR VEHICLE. WE KNOW IT
18 BETTER THAN YOU.

19 WE AGREE WITH MR. MEYER, AND IT'S A FUNCTION OF JUST
20 BASIC ENGINEERING, THAT, ALL THINGS BEING EQUAL, THE LOWER THE
21 DEPLOYMENT THRESHOLD, THE LESS FORCE OR MOMENTUM NEEDED FOR IT
22 TO PAY OUT. HE'S RIGHT. HE'S RIGHT ABOUT THAT.

23 IF YOU HAVE A HIGH THRESHOLD, YOU ARE GOING TO NEED
24 MORE FORCE FOR IT TO PAY OUT. HOWEVER, THAT DOESN'T MEAN IT'S
25 NOT GOING TO PAY OUT. YOU HAVE TO KNOW WHAT'S HAPPENING IN THE

1 ACCIDENT. YOU HAVE TO KNOW WHETHER THERE IS AN AIRBAG
2 DEPLOYMENT. YOU HAVE TO KNOW ABOUT THE VEHICLE. THAT'S WHAT
3 BIOMECHANICS DO. HE DID NOT PROVIDE BIOMECHANIC TESTIMONY. HE
4 IS A SEATBELT EXPERT.

5 SO HE SAYS TWO THINGS: ONE, THAT TWO-KILONEWTON
6 THRESHOLD SHOULD BE HIGHER. THAT'S ONE OPINION. THE OTHER
7 OPINION IS JUST HAVE A STOP, STOP IT AFTER SIX INCHES. NOW, WE
8 WILL AT TRIAL, IF GIVEN THE OPPORTUNITY, TELL YOU WHY THAT IS A
9 BAD IDEA AND WHY PROBABLY MAZDA DIDN'T DO THAT. BUT SET THAT
10 ASIDE, BECAUSE THE ONE THING I WILL SAY ABOUT THAT OPINION IS
11 THEY HAVE A BIOMECHANIC, DR. ZIEJEWSKI. I'LL JUST CALL HIM
12 DR. Z, BECAUSE I'LL MESS UP HIS LAST NAME.

13 HE SAYS MORE LIKELY THAN NOT, HAD YOU HAD A STOP,
14 MR. ANDREWS WOULD BE ALIVE TODAY. I'M A BIOMECHANIC. I KNOW
15 HOW THE BODY REACTS INSIDE THE VEHICLE. AND IF THIS THING PAID
16 OUT ONLY SIX INCHES, HIS HEAD WOULD HAVE HIT THE STEERING WHEEL
17 BUT IT WOULDN'T HAVE HIT IT WITH SO MUCH FORCE THAT HE WOULD BE
18 DEAD. ALL RIGHT. NOW, WE DISAGREE WITH ALL OF THAT, BUT THAT
19 GETS YOU TO THE FACT FINDER.

20 THE OTHER TESTIMONY OR OTHER DESIGN WE DO TAKE ISSUE
21 WITH: THIS IS A MASSIVE COLLISION. IT'S IN THE 99TH
22 PERCENTILE OF ACCIDENTS.

23 MR. BUTLER: YOUR HONOR, JUST FOR CLARIFICATION, I
24 THOUGHT WE WERE ARGUING A DAUBERT MOTION AS TO MR. MEYER. THIS
25 SOUNDS LIKE CLOSING ARGUMENT FOR THE TRIAL. HE IS TALKING

1 ABOUT THE WHOLE CASE.

2 THE COURT: WELL, I WILL ALLOW HIM TO MAKE THIS
3 ARGUMENT.

4 MR. SCRIBNER: THANK YOU. AND I'LL GET TO IT. I
5 THOUGHT I WOULD GET A LITTLE WIDER BERTH AFTER TWO HOURS OF
6 TESTIMONY THAT DIDN'T ANSWER MY QUESTION, BUT I AM GOING TO
7 MOVE ON.

8 THIS IS A MASSIVE COLLISION. AND TO SAY THAT IT
9 WOULD HAVE MADE A DIFFERENCE IF YOU USED A THREE-KILONEWTON, A
10 FOUR-KILONEWTON, A FIVE-KILONEWTON, A SIX-KILONEWTON THRESHOLD,
11 YOU HAVE TO DO THE MATH. YOU HAVE TO DO IT.

12 YOU CAN'T UNDER GEORGIA LAW SAY I CAN MAKE SOMETHING
13 SAFER. YOU HAVE TO SAY YOU CAN MAKE IT SAFER. THERE ARE CASES
14 OUT THERE WHERE YOU DON'T PROPOSE AN ALTERNATIVE DESIGN, BUT
15 NOT WITH THESE LAWYERS. THEY ARE TOO GOOD. GOOD PLAINTIFF'S
16 LAWYERS HAVE AN ALTERNATIVE DESIGN AND THEY SAY YOU DIDN'T
17 INCORPORATE A DESIGN THAT'S SAFER AND WOULD HAVE MADE A
18 DIFFERENCE, BECAUSE IF IT DOESN'T MAKE A DIFFERENCE, IT'S NOT A
19 CLAIM.

20 ALL RIGHT. SO I WANT TO BACK UP AND TALK A LITTLE
21 BIT ABOUT THE HISTORY HERE OF THE BIOMECHANIC OPINIONS, BECAUSE
22 I THINK WE ARE IN THE POSITION WE ARE BECAUSE OF SOME
23 CIRCUMSTANCES THAT THE COURT NEEDS TO BE AWARE OF.

24 SO ORIGINALLY, REMEMBER, THEY ARE PURSUING A THEORY
25 AGAINST THE AIRBAG AND THE SEATBELT.

1 THE COURT: RIGHT.

2 MR. SCRIBNER: BOTH. AIRBAG WAS NO GOOD BECAUSE IT
3 DIDN'T HAVE THE DUAL SENSORS. THE SEATBELT PAYS OUT TOO MUCH.
4 THEY GET AN EXPERT, DR. JOE BURTON, WHO IS AN M.D., A MEDICAL
5 DOCTOR. DR. BURTON, SMARTLY, WISELY, BECAUSE HE'S A SMART GUY,
6 SAYS I'M NOT GOING TO SEPARATE THE INJURIES RELATED TO THE
7 AIRBAG AND THE SEATBELT. I DON'T HAVE TO. RIGHT? YOU ARE
8 PURSUING THOSE TOGETHER. SO I CAN TELL YOU THIS: IF THE
9 AIRBAG DEPLOYS AND THE SEATBELT DOESN'T PAY OUT THAT MUCH, HE
10 IS ALIVE TODAY. HE NEVER MADE AN ATTEMPT TO SEPARATE THE
11 INJURIES SEPARATELY. BUT THEY SETTLED WITH MAZDA, NUMBER ONE.
12 AND THE SECOND THING THAT HAPPENED WAS DR. BURTON PLED GUILTY
13 TO VARIOUS FELONIES.

14 SO THEY ARE NOW IN A DIFFERENT SPOT. THEY HAVE TO
15 GET A NEW BIOMECHANIC. AND NOW THEY HAVE TO PROVE THAT THAT
16 SEATBELT, REGARDLESS OF THE AIRBAG NOT DEPLOYING, THAT SEATBELT
17 CAUSED THE PROBLEMS. AND THEY GET TO A FACT FINDER ON THAT
18 STOP. WE HAVE A LOT TO SAY ABOUT THE STOP, MIND YOU, BUT THEY
19 GET THERE.

20 WITH RESPECT TO THE ALTERNATIVE DESIGN THAT THE
21 HIGHER THRESHOLD WOULD MAKE A DIFFERENCE, YOU KNOW, TWO HOURS
22 HE TESTIFIED AND WHAT WE DIDN'T HEAR IS ANY BIOMECHANIC
23 TESTIMONY THAT WOULD SAY MORE LIKELY THAN NOT IF YOU USED A
24 THREE-KILONEWTON OR A FOUR-KILONEWTON, HE WOULD BE ALIVE TODAY.

25 WHAT WE ARE HEARING IS A BASIC ENGINEERING NOTHING

1 BURGER. AND I MEAN THAT IN THE MOST SINCEREST WAY. IF I CAN
2 FIGURE IT OUT, EVERYONE IN THE ROOM CAN FIGURE IT OUT. A
3 HIGHER THRESHOLD MEANS LESS MOVEMENT ALL THINGS BEING EQUAL.
4 YEAH, I CAN GET BEHIND THAT.

5 THIS VEHICLE WAS TESTED IN NCAP AND IT GOT FOUR OUT
6 OF FIVE STARS AS DID VOLVO. THAT TELLS YOU SOMETHING. IT
7 TELLS YOU THAT SOME PEOPLE WOULD LOOK AT THOSE MAZDA RESULTS
8 AFTER AN ACCIDENT LIKE THIS AND MONDAY MORNING QUARTERBACK IT
9 AND SAY, OH, YOU KNOW, I THINK YOU HAD TOO MUCH PAY-OUT. YOU
10 SHOULD HAVE HAD A HIGHER THRESHOLD.

11 SOMEONE WOULD LOOK AT THE VOLVO IN A DIFFERENT
12 ACCIDENT AND SAY, OH, LOOK AT THOSE CHEST INJURIES. BOY, YOU
13 KNOW, YOU SHOULD HAVE HAD MORE PAY-OUT. ANYBODY CAN MONDAY
14 MORNING QUARTERBACK THIS.

15 THE FACT IS WE SOLD A 3.5-KILONEWTON THRESHOLD TO
16 MAZDA FOR THE 2006. IT WAS NOT OUR IDEA. IT WAS NOT OUR
17 SUGGESTION. COULDN'T DISAGREE MORE WITH WHAT HE SAID. WE GIVE
18 THEM THE MATERIALS, THEY PERFORM THE TESTING AND THEY INCLUDE
19 IN THE VEHICLE WHAT THEY WANT TO INCLUDE IN THE VEHICLE. WILL
20 WE ANSWER QUESTIONS? YES. ARE THEY GOING TO SAY, HEY, YOU
21 KNOW, WHAT DO YOU THINK ABOUT X? YEAH. THAT'S COLLABORATION
22 AND JUDGE DUFFEY KNEW ABOUT ALL OF THAT COLLABORATION.

23 WE SUPPLIED A SIX-KILONEWTON THRESHOLD TO VOLVO
24 BECAUSE THEY ASKED FOR IT. THERE'S A THING CALLED A
25 SPECIFICATION. CAPITAL S, SPECIFICATION. AFTER THEY DO THEIR

1 TESTING THEY COME BACK AND THEY SAY, LISTEN, MR. SUPPLIER OR
2 MS. SUPPLIER, YOU'VE GOT TO GIVE ME A SEATBELT ASSEMBLY THAT
3 DOES THIS OR AN AIRBAG MODULE THAT DOES THIS.

4 IN THE VOLVO SPECIFICATION, IT SAID 6.0 KILONEWTON.
5 IN THE 2005 MAZDA3, IT SAID TWO KILONEWTON. IN THE 2006 MODEL
6 3, IT SAID 3.5 KILONEWTON. THAT'S WHAT WE SUPPLIED.

7 I AGREE WITH MR. MEYER THAT THAT FINE TUNING THAT
8 TAKES PLACE WITH THE VEHICLE HAS TO TAKE PLACE. THE OEM, THE
9 MAZDAS, THE VOLVOS OF THE WORLD, THEY HAVE TO PERFORM THEIR
10 TESTING AND TOUGH DESIGN DECISIONS HAVE TO BE MADE. AND I
11 DON'T RELISH BEING IN THAT POSITION. IT'S HARD. AND YOU ARE
12 TRYING TO PROTECT LIVES AND, YOU KNOW, IT'S SERIOUS BUSINESS.
13 AND YOU GIVETH WITH ONE HAND, YOU TAKETH AWAY WITH THE OTHER
14 EVERY SINGLE TIME. THAT'S WHAT YOU ARE GOING TO HEAR FROM OUR
15 EXPERTS, WHICH IS YOU DO ONE THING HERE, IT'S GOING TO HAVE AN
16 IMPACT HERE. WHETHER THAT DECISION WAS RIGHT, WRONG, OR NOT
17 THAT DECISION WAS A MAZDA DECISION.

18 I WANT TO TALK ABOUT THE LAW BRIEFLY. IN A PRODUCT
19 LIABILITY CASE IN GEORGIA, EVIDENCE OF AN ALTERNATIVE DESIGN IS
20 ONLY RELEVANT IF THAT ALTERNATIVE DESIGN WOULD HAVE PREVENTED
21 OR MINIMIZED THE PLAINTIFF'S INJURIES. IT IS NOT ENOUGH TO
22 SHOW THAT YOU HAVE AN ALTERNATIVE DESIGN THAT WOULD MAKE IT
23 SAFER IN A VACUUM. IT HAS TO HAVE MADE A DIFFERENCE.

24 NOW, THAT'S BEEN THE LAW SINCE THE BANKS DECISION.
25 IT'S A SEMINAL CASE IN PRODUCTS LIABILITY LAW IN GEORGIA, THE

1 SUPREME COURT OF GEORGIA (1995). IN WILSON FOODS, COURT OF
2 APPEALS, SHORTLY AFTER THE BANKS DECISION, THE WILSON FOODS
3 CASE SAYS AS FOLLOWS AND I QUOTE: THE PLAINTIFF IN A SUIT
4 INVOLVING A CLAIM OF DEFECTIVE DESIGN MAY INTRODUCE EVIDENCE
5 THAT A FEASIBLE ALTERNATIVE DESIGN WHICH WOULD HAVE -- I'M
6 SORRY -- WHICH COULD HAVE PREVENTED OR MINIMIZED THE
7 PLAINTIFF'S INJURIES WAS AVAILABLE AT THE TIME THE MANUFACTURER
8 MADE ITS DESIGN DECISIONS.

9 NOW, IN PLAINTIFF'S RESPONSE BRIEF TO OUR MOTION,
10 PAGE 16, THEY SAY WE HAVE MISREPRESENTED THE LAW TO THIS COURT.
11 THEY SAY IN SIX SEPARATE PLACES THAT THIS RULE THAT WE ARE
12 CITING IS A MADE-UP RULE.

13 THE COURT: YES, THEY DID SAY THAT.

14 MR. SCRIBNER: THEY SAID IT'S A MADE-UP RULE. THAT
15 IS GOING TO BOTHER ME.

16 MAY I APPROACH, YOUR HONOR?

17 THE COURT: YES, SIR.

18 THANK YOU.

19 MR. SCRIBNER: THESE ARE THE SUGGESTED PATTERN JURY
20 INSTRUCTIONS. AND IF YOU SCROLL BACK TO STRICT LIABILITY,
21 62.660, IT SAYS: IN DETERMINING WHETHER A PRODUCT WAS
22 DEFECTIVE, YOU MAY CONSIDER EVIDENCE OF AN ALTERNATIVE DESIGN
23 THAT WOULD HAVE MADE THE PRODUCT SAFER AND COULD HAVE PREVENTED
24 OR MINIMIZED THE PLAINTIFF'S INJURY. AND THEY CITE BANKS AND
25 THEY CITE WILSON FOODS.

1 AND SO IF WE ARE WRONG ABOUT THE LAW, WELL,
2 UNFORTUNATELY, THE COURTS IN THIS STATE HAVE BEEN CHARGING
3 JURIES ON THIS FOR A LONG TIME. I HEAR OVER MY LEFT SHOULDER
4 MUMBLING ABOUT WOULD HAVE VERSUS COULD HAVE. THEY ARE WRONG.
5 YOU CAN'T JUST SUBMIT AN ALTERNATIVE DESIGN THAT COULD HAVE
6 THEORETICALLY CHANGED THE OUTCOME. YOU HAVE TO HAVE AN
7 ALTERNATIVE DESIGN THAT WOULD HAVE MADE A DIFFERENCE.
8 OTHERWISE, WHAT ARE WE TALKING ABOUT? THAT MR. MEYER CAN SAY
9 THREE IS SAFER THAN TWO?

10 WELL, SAFE IS AN INTERESTING WORD. IT'S NOT SAFER IF
11 HE IS STILL NOT ALIVE. YOU COULD HAVE AN EIGHT-KILONEWTON
12 THRESHOLD IN THERE. WOULD IT BE SAFER? FOR SOME PEOPLE UNDER
13 CERTAIN CIRCUMSTANCES, PERHAPS. IS IT SAFER TO MR. ANDREWS?
14 YOU NEED A BIOMECHANIC WHO SAYS WITHOUT A DOUBT I HAVE DONE THE
15 MATH AND IT MAKES A DIFFERENCE.

16 WE ASKED THE BIOMECHANIC THAT THEY HAVE HIRED, DR. Z,
17 HAVE YOU DONE ANY WORK IN THIS AREA? WHAT HAPPENS TO
18 MR. ANDREWS IF IT'S A THREE-KILONEWTON THRESHOLD? I DON'T
19 KNOW. WHAT HAPPENS IF IT'S FOUR? I DIDN'T DO THAT WORK. WHAT
20 IF IT'S FIVE OR SIX? I DON'T KNOW. HOW MUCH DOES IT PAY OUT?
21 I GO AT IT A DIFFERENT WAY, BECAUSE MAYBE HE'S A CRAFTY GUY. I
22 MIGHT COME HERE AND HE IS GOING TO SAY, WELL, BUT I DO KNOW IT
23 PAYS OUT THIS MUCH, RIGHT? DOES IT PAY OUT SEVEN INCHES? DOES
24 IT PAY OUT 12 INCHES? DOES IT PAY OUT 20 INCHES? I DO NOT
25 KNOW, WHICH TELLS ME THAT MR. MEYER IS RIGHT THAT THE HIGHER

1 THE THRESHOLD, THE MORE FORCE THAT IS REQUIRED BEFORE IT PAYS
2 OUT. TRUE. BUT NO ONE CAN TESTIFY TO A REASONABLE DEGREE OF
3 SCIENTIFIC CERTAINTY THAT A CHANGE IN THE THRESHOLD MAKES A
4 DIFFERENCE HERE.

5 WE'LL MAKE ONE FINAL POINT AND THEN ANSWER ANY
6 QUESTIONS OR SIT DOWN.

7 IN THEIR MOTION TO EXCLUDE THE TESTIMONY OF DR. VAN
8 ARSDELL, THEY MAKE THE FOLLOWING STATEMENT IN THEIR BRIEF:
9 FEDERAL LAW PROHIBITS ANYONE FROM TESTIFYING AS TO INJURY
10 CAUSATION UNLESS THEY HAVE A MEDICAL DEGREE. I THINK THEY ARE
11 RIGHT. I MEAN, YOU KNOW, WITH ALL DUE RESPECT TO MR. MEYER, HE
12 IS AN ACCOMPLISHED FELLOW, BUT HE SHOULDN'T BE TELLING US WHAT
13 KIND OF INJURIES PEOPLE ARE GOING TO SUFFER UNDER CERTAIN
14 CIRCUMSTANCES. WHAT HE CAN SAY IS WHAT HE SAID: THE HIGHER
15 THRESHOLD, THE MORE FORCE REQUIRED BEFORE IT PAYS OUT.

16 WE APPRECIATE, YOUR HONOR, THAT IT'S A RELAXED
17 STANDARD. YOU ARE A VERY EXPERIENCED FACT FINDER AND YOU ARE
18 GOING TO SIFT THE WHEAT FROM THE CHAFF, BUT THIS IS A
19 FUNDAMENTAL ISSUE IN THIS CASE AND I AM AFRAID THAT WE SPENT A
20 BIG PORTION, MAYBE 90 PERCENT OF THAT TWO-HOUR TESTIMONY TODAY,
21 ON THAT ISSUE, THE THRESHOLD, AND WE JUST DON'T THINK THAT IT
22 SATISFIES DAUBERT. AND I'LL ANSWER ANY QUESTIONS IF YOU HAVE
23 ANY.

24 THE COURT: NOT AT THIS TIME, MR. SCRIBNER. THANK
25 YOU.

1 MR. SCRIBNER: THANK YOU.

2 THE COURT: MS. CANNELLA?

3 (PAUSE IN PROCEEDINGS)

4 MS. CANNELLA: I'M SORRY, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. CANNELLA: IT'S A LOT TO UNPACK THERE.

7 YOUR HONOR, THIS IS KIND OF A STRANGE MOTION AND SO
8 WE HAVE BEEN SCRATCHING OUR HEADS ABOUT IT TO SOME DEGREE.

9 AUTOLIV ADMITS WE HAVE EVIDENCE THAT AN ALTERNATIVE
10 DESIGN WOULD HAVE SAVED MICAH, SO THEN STOP. THERE IS NO
11 QUESTION ABOUT THE ADMISSIBILITY OF THAT. SO WHAT WE ARE
12 QUIBBLING ABOUT IS WHETHER MR. MEYER AND PLAINTIFFS CAN UTTER
13 THE WORDS WEAK TORSION BAR OR STRONG TORSION BAR OR VOLVO OR
14 ANY OF THE OTHER CARS ON THIS CHART. AND THE EVIDENCE OF THAT
15 IS ON PAGE 15 TO 17 OF THE BRIEF, THE DAUBERT BRIEF. THE
16 CONCLUSION SAYS THAT AUTOLIV'S --

17 THE COURT: WHICH DAUBERT, YOURS OR THEIRS?

18 MS. CANNELLA: THEIRS, YOUR HONOR. SORRY. THEIR
19 MOTION TO EXCLUDE THE ALTERNATIVE DESIGN OPINION OF STEVE MEYER
20 ON PAGE 15 TO 17 HAS A CONCLUSION. AND THEY SAY THAT AUTOLIV
21 IS NOT JUST ASKING TO EXCLUDE EVIDENCE FROM STEVE MEYER ON THE
22 ALTERNATIVE DESIGN OF THE SEATBELT WITH THE HIGHER THRESHOLD.
23 THEY SAY, QUOTE, ALL EVIDENCE AND ARGUMENT RELATED TO THE
24 SUBJECT SEATBELT'S 2.0 KILONEWTON DEPLOYMENT THRESHOLD SHOULD
25 BE EXCLUDED. ALL OF IT. THAT, QUOTE, THE COURT SHOULD

1 PRECLUDE PLAINTIFF FROM ARGUING THAT THE DEPLOYMENT THRESHOLD
2 AND THE SUBJECT SEATBELT'S RETRACTOR WAS TOO LOW, UNQUOTE.

3 IN OTHER WORDS, WHAT AUTOLIV REALLY WANTS TO DO IS TO
4 KEEP THE COURT FROM HEARING THIS, HOW BAD THIS SEATBELT WAS,
5 AND THAT DOESN'T MAKE ANY SENSE. THE REASON THEY DON'T WANT
6 THE COURT TO HEAR THAT IS BECAUSE THE DESIGN ITSELF IS
7 COMPLETELY INDEFENSIBLE, WHICH WE HAVE HEARD TODAY AND WHICH WE
8 CAN SEE JUST BY LOOKING AT THIS CHART.

9 SO AS MR. SCRIBNER RECOGNIZED, THERE IS NO WORRY
10 ABOUT UNFAIR PREJUDICE IN A BENCH TRIAL. THE COURT IS THE
11 GATEKEEPER AND THE FACT FINDER, SO NONE OF THIS -- THIS IS THE
12 PERFECT EXAMPLE OF A MOTION TO HEAR THE EVIDENCE, LET MR. MEYER
13 COME TALK ABOUT THIS, AND THEN, IF THE COURT DECIDES THAT
14 ALTERNATIVE DESIGN SHOULD ONLY BE USED FOR CERTAIN PURPOSES,
15 THEN IT CAN DO THAT AFTER THE TRIAL.

16 THIS EVIDENCE IS, THE EVIDENCE OF HOW EXTREMELY WEAK
17 THE SEATBELT WAS COMPARED TO OTHER AUTOLIV SEATBELTS BEING USED
18 ON THE SAME PLATFORM IS RELEVANT TO PUNITIVE DAMAGES. IT IS
19 RELEVANT TO A CONSCIOUS DISREGARD FOR THE SAFETY OF THE PEOPLE
20 WHO ARE USING THIS SEATBELT. IT'S RELEVANT TO HOW REASONABLE
21 IT WAS FOR AUTOLIV TO SELL THIS, TO PUT THIS INTO THE MARKET.
22 IT'S RELEVANT TO THEIR KNOWLEDGE ABOUT HOW DANGEROUS THIS
23 SEATBELT WAS. AND IT'S RELEVANT TO HOW MUCH OF AN OUTLIER THIS
24 SEATBELT REALLY WAS.

25 SO WHAT THE MOTION IS ABOUT ISN'T ABOUT MR. MEYER OR

1 CAUSATION OR, YOU KNOW, MEDICAL CAUSATION OR ANY OF THOSE
2 THINGS. IT'S JUST LET'S NOT EVEN TALK ABOUT HOW WEAK AND HOW
3 TERRIBLE THIS SEATBELT IS. AND THAT'S NOT, THAT'S NOT A VALID
4 ARGUMENT. ALL OF THIS EVIDENCE IS OBVIOUSLY RELEVANT.

5 YOUR HONOR, I WANTED TO TOUCH ON SOME OF THE THINGS
6 THAT MR. SCRIBNER SAID THAT WERE SURPRISING. ONE OF THEM WAS
7 THAT -- LET'S SEE IF I CAN FIND IT. I WROTE IT DOWN.

8 THE FIRST THING THAT SURPRISED ME OR ONE OF THE
9 THINGS THAT SURPRISED ME IS THAT HE TALKED ABOUT MAZDA MAKING
10 THESE DECISIONS. AND WE JUST GOT BACK FROM APPEAL, A 17-MONTH
11 DELAY, DURING WHICH TIME THE ELEVENTH CIRCUIT SAID THAT DOESN'T
12 MATTER. IF YOU MAKE A SEATBELT THAT IS DEFECTIVE AND YOU SELL
13 IT AND THAT DEFECT CAUSES INJURY, YOU ARE LIABLE. SO, YOU
14 KNOW, WE ARE BACK KIND OF -- IT FEELS A LITTLE LIKE DEJA VU.

15 THE OTHER THING THAT SURPRISED ME WAS THE
16 REPRESENTATION THAT DR. BURTON DID NOT GIVE AN OPINION THAT THE
17 SEATBELT WITHOUT THE AIRBAG WOULD HAVE SAVED MICAH ANDREWS AND
18 THAT'S NOT CORRECT. MR. WEEKS HAS PULLED UP THE CITATION TO IT
19 AND HE HANDED IT TO ME SOMEWHERE. NOW I'VE LOST IT. OKAY.

20 QUESTION: "SO I'M HAVING" --

21 MR. BUTLER: PAGE AND LINE, PLEASE.

22 MS. CANNELLA: I'M SORRY. WE'RE ON PAGE --

23 MR. BUTLER: THE BURTON DEPO?

24 MS. CANNELLA: IT'S PAGE 127 OF THE DR. BURTON DEPO
25 WHICH IS ON THE RECORD.

1 THE COURT: PAGE 127. LINE?

2 MS. CANNELLA: 21.

3 THE COURT: 21.

4 MS. CANNELLA: QUESTION -- OH, AND LET ME TELL YOU,
5 TOO, THE DOCUMENT IS DOCUMENT 234.

6 THE COURT: THANK YOU.

7 MS. CANNELLA: YES, SIR.

8 QUESTION: SO I'M HAVING -- ARE YOU SAYING THAT JUST
9 THE -- HAD JUST THE SEATBELT WORKED, AS STATED IN ROMAN NUMERAL
10 V - THAT'S HIS OPINION - THAT HE WOULD NOT HAVE RECEIVED THE
11 FATAL INJURIES REGARDLESS OF THE AIRBAG?

12 ANSWER: YES.

13 SO I'M NOT SURE WHY THAT MATTERS, BUT THAT WASN'T --
14 THAT'S NOT TRUE.

15 AUTOLIV ALSO TALKED ABOUT CHEST INJURIES BEING CAUSED
16 BY THE VOLVO. THERE IS NO EVIDENCE OF THAT ANYWHERE IN THE
17 CASE. SO AUTOLIV WAS SELLING THE VOLVO SEATBELT. IT WAS A
18 SAFE SEATBELT. THAT, AGAIN, IS NOT ON THE RECORD.

19 THE DEFENDANT SAID, THE DEFENDANT SAID YOU HAVE TO
20 HAVE AN ALTERNATIVE DESIGN THAT, QUOTE, WOULD HAVE MADE A
21 DIFFERENCE. YOU HAVE TO HAVE A BIOMECHANIC WHO SAYS WOULD HAVE
22 MADE A DIFFERENCE. BUT THE CHANGE IS SUBTLE BUT IMPORTANT.

23 THE EXHIBIT 3 THAT AUTOLIV HANDED UP SAYS: IN
24 DETERMINING WHETHER A PRODUCT WAS DEFECTIVE, YOU MAY CONSIDER
25 EVIDENCE OF ALTERNATIVE DESIGNS THAT WOULD HAVE MADE THE

1 PRODUCT SAFER. WOULD, WOULD HAVE MADE THE PRODUCT SAFER. AND
2 THE SECOND THING: AND COULD HAVE PREVENTED OR MINIMIZED THE
3 PLAINTIFF'S INJURY.

4 THOSE ARE TWO SEPARATE THINGS. WOULD HAVE MADE THE
5 PRODUCT SAFER, WE ONE HUNDRED PERCENT APPROVE THAT TODAY, THAT
6 A SIX-KILONEWTON TORSION BAR IS SAFER. AND COULD HAVE
7 PREVENTED OR MINIMIZED THE PLAINTIFF'S INJURY. WELL, IT'S JUST
8 PHYSICS. MR. MEYER TALKED ABOUT A STRONGER TORSION BAR REDUCES
9 YOUR ABILITY TO MOVE FORWARD. THAT'S GOING TO MINIMIZE YOUR
10 IMPACT WITH THE STEERING WHEEL. SO IT MEETS EVEN AUTOLIV'S
11 JURY INSTRUCTION THAT, YOU KNOW, AUTOLIV CONTENTS THIS HELPS
12 IT. IT DOESN'T HELP IT. IT SAYS THAT OUR EVIDENCE IS
13 ADMISSIBLE. IT'S THE SAME KIND OF SHELL GAME THAT GOT AUTOLIV
14 IN TROUBLE WITH THE ELEVENTH CIRCUIT. IT'S NOT A VALID READING
15 OR A CORRECT READING OF THE JURY INSTRUCTION.

16 I'LL ALSO NOTE, YOUR HONOR, THAT NO CASE, NO GEORGIA
17 CASE HAS EVER SAID IF YOU CANNOT MAKE A ONE HUNDRED PERCENT
18 CONNECTION BETWEEN AN ALTERNATIVE DESIGN AND THE INJURY CAUSED
19 THAT EXPERT IS OUT. THAT WOULD BE, THIS WOULD BE SOMETHING
20 THAT DOESN'T APPEAR IN THE GEORGIA CASE LAW.

21 SO WE'VE GOT BANKS, WHICH WE'VE QUOTED THE LANGUAGE
22 IN OUR BRIEF, WHICH SAYS THAT YOU HAVE TO PROVE THAT THERE WAS
23 A SAFER ALTERNATIVE, A SAFER ALTERNATIVE, WHICH WE HAVE DONE.
24 AND THEN WHOLE FOODS, WHICH TALKS ABOUT -- IT'S A STRANGE CASE.
25 IT'S 1996, FIRST OF ALL. WE'VE GOT CERTAINTIED, WHICH IS AN

1 ELEVENTH CIRCUIT CASE AFTER THAT, AND WE'VE GOT MULTIPLE
2 GEORGIA SUPREME COURT CASES AFTER THAT WHICH DO NOT USE THE
3 LANGUAGE IN THE WHOLE FOODS CASE, FIRST OF ALL. SO WHATEVER
4 WAS GOING ON IN WHOLE FOODS HAS NEVER BEEN REPLICATED AT THE
5 GEORGIA SUPREME COURT OR ANY OF THE CASES AFTER IT. THAT'S
6 NUMBER ONE.

7 NUMBER TWO, THE WHOLE FOODS OPINION IS A VERY STRANGE
8 ONE. IT TALKS ABOUT THE ALTERNATIVE DESIGN BEING A SUBSEQUENT
9 REMEDIAL MEASURE, THAT THEY WERE POST-INJURY AND
10 POST-MANUFACTURER ALTERNATIVE DESIGNS. AND IT DOESN'T
11 ACTUALLY -- YOU KNOW, IT'S JUST A VERY STRANGE CASE. IT
12 DOESN'T REALLY SQUARE WITH ANYTHING ELSE IN GEORGIA LAW.

13 IT'S UNDISPUTED AND UNDISPUTABLE THAT STRONGER
14 TORSION BARS WOULD HAVE DECREASED MR. ANDREWS' FORWARD MOTION.
15 EVEN AUTOLIV ADMITS THAT. AND EVEN IF HE HAD HIT THE STEERING
16 WHEEL, A STRONGER TORSION BAR WOULD HAVE DONE -- WOULD HAVE
17 REDUCED THE FORCE OF THAT IMPACT. THAT COULD HAVE MINIMIZED
18 HIS INJURY. THAT'S WHAT THAT IS FROM THE JURY INSTRUCTIONS.

19 IT IS UNDISPUTED AND UNDISPUTABLE THAT THE WHOLE
20 POINT OF A SIX-KILONEWTON TORSION BAR IS TO REDUCE THAT FORWARD
21 MOTION AND REDUCE, ELIMINATE OR MINIMIZE SUCH AN IMPACT AND THE
22 INJURY.

23 AUTOLIV HAS ADMITTED THAT A STRONGER TORSION BAR
24 ALLOWS LESS SPOOL-OUT. THAT'S FROM THEIR 30(B)(6) DEPONENT. A
25 STRONGER TORSION BAR ALLOWS LESS SPOOL-OUT AND THAT'S WHAT WE

1 ARE TALKING ABOUT HERE. LESS SPOOL-OUT WOULD HAVE SAVED MICAH
2 ANDREWS.

3 NOW, IT'S IMPORTANT WHEN DECIDING THIS MOTION TO
4 DISTINGUISH BETWEEN WHAT THE COURT CONSIDERS TO DECIDE DEFECT
5 AND WHAT THE COURT CONSIDERS TO DECIDE CAUSATION. SO FOR
6 DEFECT THE LAW IN GEORGIA IS THAT YOU HAVE TO PROVE
7 REASONABLENESS. IT'S A RISK UTILITY ANALYSIS.

8 THE LAW SAYS ALTERNATIVE DESIGN IS ADMISSIBLE AS LONG
9 AS IT'S, QUOTE, SAFER THAN THE DESIGN CHOSEN, AND
10 REASONABLENESS OF THE DESIGN LOOKS AT THE DECISION THAT THE
11 DEFENDANT MADE AT THE TIME IT WAS BEING MADE.

12 SO WE ARE NOT TALKING ABOUT MICAH ANDREWS WHEN THEY
13 MADE THIS DECISION BACK IN 1999 TO SELL THIS WEAK TORSION BAR.
14 WE ARE TALKING ABOUT WHAT WAS THE INFORMATION AVAILABLE AT THE
15 TIME TO DECIDE WHETHER THAT WAS A REASONABLE DECISION OR AN
16 UNREASONABLE DECISION. AND ALL OF THESE, ALL THIS EVIDENCE
17 THAT SHOWS HOW OTHER MANUFACTURERS WERE USING TORSION BARS AND
18 PREVENTING THIS KIND OF SPOOL-OUT SHOWS HOW UNREASONABLE THE
19 DESIGN IS.

20 OKAY. THE QUESTION FOR THE COURT IS: WAS THE
21 DECISION REASONABLE WHEN AUTOLIV MADE IT? AND THAT REQUIRES
22 LOOKING AT ALL ALTERNATIVES AVAILABLE TO AUTOLIV WHEN IT
23 DECIDED TO SELL THIS DANGEROUSLY WEAK TORSION BAR.

24 THE JONES V. NORDIC TRACK DECISION, WHICH IS AFTER
25 THAT WHOLE FOODS DECISION, IT'S A GEORGIA 2001 CASE, SUPREME

1 COURT, 550 SOUTHEAST 2D 101, SAYS THE, QUOTE, HEART OF A DESIGN
2 DEFECT CASE IS THE REASONABLENESS OF SELECTING FROM ALTERNATIVE
3 PRODUCT DESIGNS AND ADOPTING THE SAFEST FEASIBLE ONE. SO THE
4 HEART OF THE CASE IS THE REASONABLENESS OF SELECTING THE DESIGN
5 FROM THE ALTERNATIVE DESIGNS AND ADOPTING THE SAFEST REASONABLE
6 ONE.

7 YOUR HONOR, I NOTICED WHEN AUTOLIV SAID, WELL, IF IT
8 DOESN'T SAVE HIM, THEN IT DOESN'T MAKE A DIFFERENCE, THEN THERE
9 IS NOT A DEFECT, THAT THAT MAKES KIND OF, I THINK, COMMON SENSE
10 TO PEOPLE. BUT THE LAW IS YOU PROVE -- IF THE DESIGN IS
11 DEFECTIVE, AND THAT CONSIDERS ALL THE ALTERNATIVES AS LONG AS
12 THEY ARE SAFER, AND THEN YOU LOOK AT WHETHER THE RISK OUTWEIGHS
13 THE UTILITY OR THE UTILITY OUTWEIGHS THE RISK, AND ONCE YOU
14 HAVE A DEFECT YOU LOOK AT THE DEFECT TO SEE IF IT CAUSED THE
15 INJURY. THAT'S HOW THE ANALYSIS WORKS UNDER GEORGIA LAW.

16 OKAY. AND LIKE I SAID EARLIER, WE DO HAVE AN
17 ALTERNATIVE DESIGN THAT UNQUESTIONABLY WOULD HAVE SAVED HIM.
18 SO THAT'S NOT REALLY THE ISSUE OF THIS MOTION.

19 THE ELEVENTH CIRCUIT IN THE CERTAINTIED CASE SAID THE
20 SAME THING AS THE JONES V. NORDIC TRACK CASE AND THAT IS THAT
21 AN ALTERNATIVE DESIGN WOULD HAVE MADE THE PRODUCT SAFER THAN
22 THE ORIGINAL DESIGN AND WAS A MARKETABLE REALITY AND
23 TECHNOLOGICALLY FEASIBLE. THAT'S EXACTLY WHAT MR. MEYER WILL
24 TESTIFY ABOUT AND THAT'S EXACTLY THE EVIDENCE THAT AUTOLIV
25 WANTS THE COURT TO EXCLUDE. EVIDENCE THAT THE ELEVENTH CIRCUIT

1 SAYS THE COURT MUST CONSIDER IS WHAT AUTOLIV IS ASKING THE
2 COURT TO EXCLUDE.

3 I'M TRYING TO SHORTEN IT UP FOR YOU.

4 THE COURT: DO WHAT YOU'VE GOT TO DO.

5 MS. CANNELLA: OKAY.

6 THE COURT: AFTER TODAY YOU DON'T GET TO SEE ME UNTIL
7 YOU SEE MY RULING.

8 MS. CANNELLA: THAT'S TRUE. THANK YOU, YOUR HONOR.

9 OKAY. BANKS IS ONE OF THOSE UNUSUAL CASES THAT
10 ACTUALLY TELLS YOU WHAT THE HOLDING IS. SO BANKS IS GREAT FOR
11 THAT PURPOSE. AND IT IS THE SEMINAL PRODUCTS LIABILITY CASE.
12 IT'S THE ONE THAT CREATES THE RISK UTILITY TEST THAT EXISTS IN
13 GEORGIA TO DECIDE IF SOMETHING IS DEFECTIVE.

14 BANKS SAYS "WE HOLD" AND UNDER "WE HOLD" IT SAYS THE
15 TRIER OF FACT MAY CONSIDER AN ALTERNATIVE DESIGN THAT WOULD
16 HAVE MADE THE PRODUCT SAFER THAN THE ORIGINAL DESIGN, PERIOD.
17 THAT'S WHAT IT SAYS. WOULD IT HAVE MADE IT SAFER? YOU CAN
18 CONSIDER IT.

19 THIS IS NOT A TRUE DAUBERT MOTION. THIS IS A MOTION
20 IN LIMINE TO EXCLUDE EVIDENCE THAT AUTOLIV WANTS THE COURT TO
21 BELIEVE IS NOT RELEVANT, EVIDENCE OF HOW BAD THE SEATBELT WAS,
22 HOW WEAK IT WAS, BECAUSE IT'S SUPPOSEDLY NOT RELEVANT, AND
23 THAT'S REALLY HONESTLY JUST RIDICULOUS. I DON'T WANT TO
24 CHARACTERIZE, BUT IT IS RIDICULOUS. THE COURT CAN CONSIDER THE
25 EVIDENCE AND DETERMINE WHAT IS RELEVANT AT THE TRIAL AND THERE

1 IS NO DOUBT THAT THIS TESTIMONY BY MR. MEYER IS RELEVANT.

2 THANK YOU.

3 THE COURT: THANK YOU.

4 MR. SCRIBNER?

5 MR. SCRIBNER: BRIEFLY, YOUR HONOR?

6 THE COURT: YOU GET THE LAST WORD.

7 MR. SCRIBNER: THANK YOU.

8 PERHAPS SHIPS PASSING IN THE NIGHT. MS. CANNELLA
9 SAID THERE IS NO LAW THAT SAYS YOU HAVE TO HAVE A HUNDRED
10 PERCENT CONNECTION BETWEEN THE ALTERNATIVE DESIGN AND THE
11 OUTCOME. SHE IS RIGHT ABOUT THAT. BUT THEY HAVE ZERO. THEY
12 DON'T HAVE 90 PERCENT. THEY DON'T HAVE 60 PERCENT. THEY HAVE
13 ZERO. THEY LITERALLY HAVE ZERO.

14 YOU WOULD BE AT LIKE A MED. MAL. CASE WHERE SOMEBODY
15 SAYS THE DOCTOR DIDN'T DO IT RIGHT. THEY PERFORMED THE A-B-C
16 PROCEDURE. THEY SHOULD HAVE PERFORMED THE X-Y-Z. UNTIL YOU
17 CAN SHOW THAT THE X-Y-Z WOULD HAVE SAVED HIS LIFE, WHAT ARE WE
18 TALKING ABOUT? WHAT ARE WE TALKING ABOUT?

19 MS. CANNELLA SAID THAT MEYER DOES IT ALL. I THINK
20 THAT TELLS YOU EVERYTHING THERE IS TO TELL ABOUT DR. Z. I
21 DIDN'T HEAR A WORD ABOUT DR. Z SUPPORTING THIS THEORY BECAUSE
22 HE CAN'T. HE CAN'T DO IT. HE DIDN'T DO THE BACKBREAKING
23 LABOR. HE DOESN'T HAVE THE SKILLS TO DO IT. HE DIDN'T DO THE
24 MATH.

25 WHY HAVE A BIOMECHANIC AT ALL, THEN, IF ALL WE NEED

1 IS THAT FELLOW UP THERE SAYING, "LOOK, HIGHER THRESHOLD. YOU
2 NEED MORE FORCE"? WHY HAVE A BIOMECHANIC? PEOPLE HIRE
3 BIOMECHANICS BECAUSE THEY NEED TO ESTABLISH CAUSATION AND THEY
4 NEED TO SHOW THAT THAT ALTERNATIVE DESIGN WOULD MAKE A
5 DIFFERENCE. NOT COULD HAVE, THEORETICALLY. OTHERWISE, THINK
6 ABOUT WHAT TRIALS WOULD BE. I'D HAVE A THOUSAND ALTERNATIVE
7 DESIGNS THAT THEORETICALLY COULD HAVE MADE A DIFFERENCE. NO.
8 THEY HAVE TO SHOW THAT MORE LIKELY THAN NOT IT WOULD HAVE, NOT
9 TO A HUNDRED PERCENT CERTAINTY, BUT THEY GOT ZERO HERE.

10 THE LAST THING I'LL MENTION, TWO THINGS THAT I
11 STRONGLY DISAGREE WITH.

12 YES, I DISAGREE WITH THE ELEVENTH CIRCUIT,
13 RESPECTFULLY, BUT THEY DID COME BACK AND SAY, LOOK, I DON'T
14 CARE IF YOU DESIGNED THIS THING OR NOT. IF IT'S DEFECTIVE, YOU
15 ARE ON THE HOOK. THAT'S JUDGE WILSON. WE ARE LIVING WITH
16 THAT. BUT TO SUGGEST THAT ACTIVE INVOLVEMENT DOESN'T MATTER
17 ANYMORE, THIS COURT WILL ULTIMATELY ALLOCATE RESPONSIBILITY FOR
18 THIS MAN'S TRAGIC LIFE, HIS SINGLE DRIVER ERROR. DRIVING OFF
19 IS A PART OF THIS. MAZDA'S AIRBAG IS A PART OF THIS. MAZDA'S
20 DESIGN DECISION WITH RESPECT TO THE SEATBELT IS A PART OF THIS.

21 OUR INVOLVEMENT AND HOW MUCH WE DID IN TERMS OF THAT
22 DECISION IS THE CRUX OF OUR CASE. IT'S STILL IMPORTANT. IT'S
23 NOT IMPORTANT INsofar AS, YES, JUDGE WILSON SAID THAT YOU CAN
24 HAVE A LEGAL CLAIM AGAINST US, BUT ULTIMATELY, THE COURT'S
25 GOING TO HAVE TO DECIDE, YOU KNOW, WHO IS AT FAULT.

1 THE LAST THING I WILL SAY -- I SAID IT WAS THE LAST
2 THING AND I WAS WRONG. THERE IS A LOT OF TALK ABOUT WEAK AND
3 STRONG SEATBELTS. THERE'S NO WEAK OR STRONG SEATBELT. THAT'S
4 NOT A WEAK SEATBELT. IT IS A SEATBELT THAT HAS A THRESHOLD
5 THAT REQUIRES LESS FORCE IN ORDER TO PAY OUT.

6 IF MY MISSION WAS TO MAKE SURE THAT THE FACT FINDER
7 DIDN'T HEAR ABOUT ALL OF THIS, I DID A PRETTY BAD JOB BECAUSE
8 YOU HEARD IT ALL. THAT'S NOT WHY WE ARE DOING THIS. WE ARE
9 DOING THIS BECAUSE THIS TRIAL SHOULD BE A SHORT TRIAL. IT'S A
10 BENCH TRIAL. I THINK THE PARTIES CAN GET TOGETHER AND, YOU
11 KNOW, ENTER MORE STIPULATIONS THAN WE DID PREVIOUSLY. THIS IS
12 A VERY STRAIGHTFORWARD CASE. IF WE SPEND DAYS ON A THRESHOLD
13 WHEN IT DOESN'T MATTER AND CAN'T FORM THE BASIS OF YOUR
14 OPINION, I THINK WE ARE NOT DOING OUR JOBS.

15 THE COURT: THANK YOU.

16 OKAY. WHAT DO YOU ALL WANT TO DEAL WITH NEXT?

17 MS. CANNELLA: YOUR HONOR, WE SUGGEST DEALING WITH
18 THE MOTION FOR SANCTIONS NEXT.

19 THE COURT: MR. SCRIBNER?

20 MR. SCRIBNER: FINE, YOUR HONOR.

21 MS. CANNELLA: LET'S SEE. I'VE GOT ANOTHER
22 POWERPOINT HERE SOMEWHERE IF I CAN GET IT UP. I'LL MOVE THIS
23 ALONG.

24 UNFORTUNATELY, YOUR HONOR, THERE ARE ONLY TWO
25 DECISIONS FOR THIS COURT TODAY, ONLY TWO CHOICES, TO EITHER

1 ENCOURAGE AUTOLIV'S BEHAVIOR AND BEHAVIOR LIKE IT OR TO
2 DISCOURAGE THIS KIND OF BEHAVIOR IN THE FUTURE. WE RECOGNIZE
3 IT'S A DIFFICULT DECISION, BUT -- AND IT'S A DIFFICULT POSITION
4 TO BE IN, BUT HERE WE ARE.

5 LET ME GIVE A SHORT DESCRIPTION OF THE PROCEDURAL
6 BACKGROUND IN THE CASE AND LET ME, BEFORE I DO THAT, LET ME
7 GIVE YOU A COPY OF THE POWERPOINT, WHICH IS PLAINTIFF'S 1107.

8 THE COURT: THANK YOU.

9 MS. CANNELLA: OKAY. BACK AT THE TIME THE CASE WAS
10 PENDING IN DISCOVERY, THE DISTRICT COURT ORDERED ALL DOCUMENTS
11 RELATED TO THE DEVELOPMENT OF THE SEATBELT PRODUCED. AND THERE
12 WERE A NUMBER OF DIFFERENT WAYS THAT THE COURT DID THIS, BUT
13 THE SIMPLEST ONE TO TALK ABOUT IS RPD23, WHICH IS ON THE
14 SCREEN. PLEASE PRODUCE ALL DOCUMENTS, INCLUDING BUT NOT
15 LIMITED, DRAWINGS OR SCHEMATICS REFLECTING OR DESCRIBING THE
16 DEVELOPMENT OF THE OCCUPANT RESTRAINT SYSTEM IN THE SUBJECT
17 VEHICLE MODEL, WHETHER CREATED BY MAZDA, A SUPPLIER, OR OTHER
18 ENTITY. THIS REQUEST INCLUDES BUT IS NOT LIMITED TO ALL
19 DOCUMENTS REGARDING THE DEVELOPMENT AND SELECTION OF THE
20 COMPONENTS OF THE SEATBELT SYSTEM, INCLUDING THE TORSION BAR,
21 BUCKLE AND PRETENSIONER FOR THE SUBJECT VEHICLE MODEL.

22 AUTOLIV TOLD THE COURT IT DIDN'T HAVE MUCH OF
23 ANYTHING. IT SAID THAT THAT'S NOT HOW COMPONENT SUPPLIER
24 RELATIONSHIPS WORK. WE ARE JUST FILLING AN ORDER. AND YOU GOT
25 A TASTE OF THAT TODAY. WE GOT THE SPEC. WE GOT THIS PRODUCT.

1 WE FILLED THE SPEC. THEY DID THE TESTING.

2 AUTOLIV FILED A MOTION FOR SUMMARY JUDGMENT ON THE
3 GROUND THAT PLAINTIFF DIDN'T HAVE EVIDENCE OF, QUOTE, ACTIVE
4 INVOLVEMENT. JUDGE DUFFEY BELIEVED AUTOLIV'S ARGUMENT AND
5 VERSION OF EVENTS AND GRANTED SUMMARY JUDGMENT.

6 AUTOLIV USED THE EXISTENCE OF THE OFFER OF JUDGMENT
7 IT HAD IN PLACE TO PRESSURE MS. ANDREWS INTO DISMISSING HER
8 APPEAL. TO BE CLEAR, THIS IS NOT A CASE SEEKING SANCTIONS FOR
9 LATE PRODUCTION OR FAILURE TO PRODUCE DOCUMENTS. THAT'S NOT
10 WHAT'S GOING ON. WE ARE SEEKING SANCTIONS, ONE, BECAUSE
11 AUTOLIV VIOLATED A COURT ORDER TO PRODUCE DOCUMENTS; AND TWO,
12 BECAUSE AUTOLIV USED THAT CONCEALMENT TO MAINTAIN A DEFENSE
13 THAT WAS FALSE.

14 WE ARE SEEKING SANCTIONS BECAUSE AUTOLIV USED ITS
15 CONCEALMENT TO PROCURE SUMMARY JUDGMENT AND WE ARE SEEKING
16 SANCTIONS BECAUSE AUTOLIV TRIED TO MANIPULATE THAT, I SHOULD
17 SAY, PRESSURE MS. ANDREWS TO ACCEPT THAT ERRONEOUS GRANT OF
18 SUMMARY JUDGMENT BY OBTAINING AN ORDER FORCING HER TO PAY THE
19 ATTORNEY'S FEES OF THIS MULTIBILLION-DOLLAR CORPORATION.

20 WE ARE SEEKING SANCTIONS BECAUSE AUTOLIV FORCED
21 PLAINTIFF TO WASTE YEARS ON APPEAL, WASTED THE DISTRICT COURT'S
22 TIME AND RESOURCES. IT WAS 17 MONTHS ON APPEAL. THEN WE GOT
23 BACK HERE. WE HAD MORE DELAY WHEN WE GOT THE DOCUMENTS. AND
24 IT WASN'T JUST DISTRICT COURT TIME THAT WAS WASTED. IT WAS THE
25 ELEVENTH CIRCUIT TIME AS WELL. ALL THE WHILE MS. ANDREWS

1 INSISTING ON FIGHTING A DECISION THAT SHE BELIEVED WAS UNJUST
2 AND WRONG.

3 THERE HAS TO BE A CONSEQUENCE FOR THIS AND ATTORNEY'S
4 FEES IS NOT IT. WE CAN TELL BY AUTOLIV'S RESPONSE THAT
5 ATTORNEY'S FEES IS A WIN. THEY DO NOT CARE ABOUT ATTORNEY'S
6 FEES. THEY ASKED THE COURT TO CHOOSE THAT SANCTION.

7 THE COURT: AUTOLIV MAKES TWO ARGUMENTS IN THEIR
8 BRIEFS. ONE, THAT THE INFORMATION YOU RECEIVED IS NO SMOKING
9 GUN; TWO, IT REALLY DIDN'T HURT YOU, THE DELAY DIDN'T HURT YOU.
10 AND YOU JUST ARGUED THAT THE 17 MONTHS, THE DELAY DID HURT.
11 TELL ME WHY AUTOLIV IS WRONG IN THOSE TWO ARGUMENTS. ONE, THEY
12 SAY, AND I QUOTE, IT'S INSIGNIFICANT DOCUMENTS. THEN THEY ALSO
13 SAY IT'S NO SMOKING GUN. AND THEY END UP SAYING THE PLAINTIFFS
14 WERE NOT PREJUDICED IN THE DELAY IN THE PRODUCTION. YOU JUST
15 SAID YOU WERE. EXPAND ON THAT.

16 MS. CANNELLA: ABSOLUTELY, YOUR HONOR.

17 THREE RESPONSES TO THAT. THE FIRST IS THAT'S
18 MIND-BOGGLING TO ME. YOU CAN'T LIE TO A COURT AND THEN COME
19 BACK AND SAY, WELL, IT WAS ONLY 17 MONTHS. WELL, YOU KNOW,
20 THEY WEREN'T THAT BIG OF A DEAL. LET'S MOVE ON.

21 THE REPRESENTATIONS THAT ARE IN THEIR BRIEFING AND
22 THAT ARE REFLECTED IN THE COURT'S ORDER SHOW THAT THESE
23 DOCUMENTS WOULD HAVE MADE A DIFFERENCE. THEY WERE RELEVANT.
24 SO YOU CAN TALK ABOUT AND MR. MEYER DID TALK ABOUT HOW SOME OF
25 THE VA/VE'S ARE EXACTLY ABOUT THE RETRACTOR. SOME OF THE ONES

1 WE DON'T HAVE ARE ABOUT AUTOLIV'S SUGGESTION TO DECREASE THE
2 ROBUSTNESS OF THE RETRACTOR.

3 THE COURT: HOW WOULD YOU HAVE ARGUED THE SUMMARY
4 JUDGMENT TO JUDGE DUFFEY DIFFERENTLY IF YOU HAD HAD THIS
5 INFORMATION? IN READING JUDGE -- I AGREE WITH YOU. JUDGE
6 DUFFEY'S MOTION FOR SUMMARY JUDGMENT ORDER IS BASED ON FINDING
7 THAT AUTOLIV WAS NOT ACTUALLY INVOLVED IN THE DESIGN.

8 MS. CANNELLA: ABSOLUTELY.

9 THE COURT: WHAT WOULD YOU HAVE DONE DIFFERENTLY IF
10 YOU HAD HAD THIS INFORMATION?

11 MS. CANNELLA: WE WOULD HAVE DONE MULTIPLE THINGS.

12 SO LET ME -- I THINK THIS IS PROBABLY THE MOST
13 HELPFUL WAY TO GO THROUGH THAT IS I HAVE THEM KIND OF LINED UP.

14 SO WHAT YOU SEE ON THE TOP LEFT OF THIS SLIDE IS
15 PLAINTIFF -- IS A QUOTE FROM THE ORDER. PLAINTIFF OFFERS ONLY
16 BARE SPECULATION TO SUPPORT ITS ARGUMENT THAT AUTOLIV WAS
17 ACTIVELY INVOLVED IN THE DESIGN OF THE SEATBELT ASSEMBLY. BARE
18 SPECULATION IS WHAT HE SAID. IF WE WOULD HAVE HAD THESE
19 DOCUMENTS, WE WOULD HAVE BEEN ABLE TO SHOW HIM THAT THE LOAD
20 LIMITING RETRACTOR USED IN MICAH ANDREWS' CAR IS AN AUTOLIV
21 RETRACTOR. IT'S GOT THE NAME ON IT RIGHT THERE. IT'S GOT THE
22 COMPLETION DATE THAT IS BEFORE THE DAY THAT THE MAZDA PROGRAM
23 KICKED OFF. IT ALSO LISTS OTHER CLIENTS THAT AUTOLIV IS
24 SELLING THE SEATBELT TO. SO THAT STATEMENT RIGHT THERE WE
25 COULD HAVE EXPLAINED TO JUDGE DUFFEY WAS NOT RIGHT.

1 THE SECOND THING ON THIS SLIDE IS THE EVIDENCE
2 SUPPORTS ONLY AUTOLIV'S -- ONLY THAT AUTOLIV'S ROLE WAS
3 LIMITING TO CHOOSING THE COMPONENTS APPROPRIATE FOR THE MAZDA3
4 BASED ON MAZDA SPECIFICATIONS. WE KNOW THAT'S NOT TRUE. WE
5 HAVE A TOLLGATE THAT SAYS THE VA/VE SUGGESTION WAS AUTOLIV'S
6 SUGGESTION TO TAKE A LOAD LIMITER THAT WAS DIGRESSIVE, AND
7 THEREFORE STRONGER, AND TO REDUCE IT TO A WEAKER LOAD LIMITER,
8 AND EVENTUALLY THE WEAKER ONE IS THE ONE THAT MADE IT INTO THE
9 MAZDA. SO THAT'S ANOTHER STATEMENT WE COULD HAVE REBUTTED.

10 THE COURT SAID PLAINTIFF ONLY OFFERS -- OH, I'M
11 SORRY. LET ME BACK UP. THAT'S THE SAME QUOTE BUT ADDITIONAL
12 DOCUMENTS THAT WOULD HAVE HELPED US REBUT THAT.

13 ON THE RIGHT IS THE STATEMENT OF WORK, PLAINTIFF'S
14 EXHIBIT 10, AND IT HAS THE STATEMENT THAT IF THERE'S
15 CONCERNS -- CONCERNS IS THE WORD THAT AUTOLIV USED IN THE
16 DOCUMENT IT PRODUCED TO US. DEFECT IS THE WORD THAT THE
17 JAPANESE TRANSLATOR, CHECK TRANSLATOR, SAID IT ACTUALLY SAYS.
18 SO IT DOESN'T SAY CONCERNS. IT SAYS DEFECTS. THAT TRANSLATOR,
19 BY THE WAY, IS THE SAME TRANSLATOR THAT AUTOLIV USED TO CREATE
20 A SEPARATE BATCH OF TRANSLATIONS. SO SHE'S KIND OF THE GOLD
21 STANDARD.

22 ANYWAY, SO WE WOULD HAVE HAD THIS DOCUMENT THAT
23 AUTOLIV'S ALREADY ADMITTED GOVERN THE RELATIONSHIP BETWEEN
24 AUTOLIV AND MAZDA. AND THIS DOCUMENT SAYS THAT AUTOLIV HAS A
25 DUTY TO REPORT CONCERNS OR DEFECTS AND INVESTIGATE THEM AND

1 PROVIDE COUNTERMEASURES. IT HAD ALL THOSE DUTIES. THE COURT
2 DIDN'T KNOW ABOUT ANY OF THOSE THINGS WHEN IT SAID AUTOLIV'S
3 ROLE WAS LIMITED TO CHOOSING COMPONENTS JUST TO MEET THE
4 SPECIFICATION. THE COURT DIDN'T KNOW THAT.

5 THE COURT DIDN'T KNOW ABOUT THE VA/VE SUGGESTIONS
6 WHERE AUTOLIV ACTUALLY WENT TO MAZDA AND SAID HERE IS A DESIGN
7 CHANGE WE THINK YOU SHOULD MAKE AND MAZDA MADE THE DESIGN
8 CHANGE. IT MADE EVERY SINGLE ONE OF THE DESIGN CHANGES THAT
9 AUTOLIV SUGGESTED THAT WE KNOW ABOUT. THE COURT DIDN'T KNOW
10 THAT. THEY DIDN'T HAVE ANY CLUE, YOU CAN TELL FROM THE ORDER,
11 THAT THAT WAS GOING ON.

12 THE COURT SAID THE PLAINTIFF DOES NOT OFFER ANY
13 EVIDENCE TO SHOW THAT AUTOLIV'S ANALYSIS OF THE COUNTERMEASURES
14 RESULTED IN AUTOLIV SUGGESTING OR ENACTING ANY CHANGES TO THE
15 SEATBELT ASSEMBLY DESIGN. SO, AGAIN, THESE ARE VA/VE
16 SUGGESTIONS. MAZDA IS IMPLEMENTING THEM. SO THAT'S EVIDENCE
17 THAT THE COURT WOULD HAVE PROBABLY WANTED TO HEAR THAT NOT ONLY
18 WERE THEY MAKING SUGGESTIONS BUT THE SUGGESTIONS ARE BEING
19 ADOPTED. THEY HAD THIS INFLUENCE.

20 THE DISTRICT COURT DID NOT KNOW THAT AUTOLIV WAS
21 RESPONSIBLE FOR REPORTING CONCERNS. AND YOU CAN SEE THAT IN
22 THIS QUOTE FROM THE ORDER. QUOTE: MAZDA, NOT AUTOLIV,
23 PROVIDED THE COUNTERMEASURES THAT AUTOLIV WAS TO LOOK INTO.
24 WELL, GUESS WHAT? THAT WAS TRUE FOR THE ONE DOCUMENT THAT
25 AUTOLIV HAD GIVEN US THAT THE COURT SAW BUT IT WASN'T TRUE FOR

1 THEIR RELATIONSHIP, THE STATEMENT OF WORK THAT GOVERNED THEIR
2 RELATIONSHIP. SO THEY HAD DUTIES TO DO THESE THINGS AND THE
3 COURT CARED ABOUT THE FACT THAT IT THOUGHT IT DIDN'T HAVE THAT
4 DUTY AND WASN'T DOING IT. SO THAT WOULD HAVE BEEN DIFFERENT.

5 AUTOLIV ALSO PROVIDED THIS 30(B)(6) TESTIMONY TO THE
6 COURT WHICH THE COURT QUOTED.

7 THE COURT: I AM GOING TO ASK MR. SCRIBNER ABOUT
8 THAT.

9 MS. CANNELLA: YES. THE COURT QUOTED IT RIGHT IN ITS
10 ORDER.

11 MR. PRENTKOWSKI FURTHER TESTIFIED: I SPECIFICALLY
12 ASKED, "DID MAZDA ASK AUTOLIV JAPAN FOR ANY INPUT ON THE
13 SYSTEM-LEVEL DESIGN SPECIFICATIONS?"

14 THE ANSWER WAS: "NOT ON THE SEAT." THE AUTOLIV
15 JAPAN RESPONSE WAS, "NOT ON THE SEATBELT SYSTEMS."

16 THAT'S NOT TRUE. THAT'S NOT TRUE. WE DIDN'T HAVE
17 THESE DOCUMENTS WHEN WE DEPOSED MR. PRENTKOWSKI. WE COULDN'T
18 IMPEACH HIM ABOUT IT, WE COULDN'T ASK HIM ABOUT IT, AND THE
19 COURT DIDN'T HAVE THAT INFORMATION.

20 THE COURT: YES, MS. CANNELLA. THAT ONE HAS A STAR
21 BY IT.

22 MS. CANNELLA: YES.

23 SO WHY DID AUTOLIV FINALLY PRODUCE THE DOCUMENTS?
24 THAT'S AN INTERESTING STORY.

25 THE COURT: NOW, THEY SAY THERE IS NO NEGLIGENCE.

1 NOT WILLFUL, NOT BAD FAITH. THEY JUST ASKED AUTOLIV TO PAY HIM
2 TO FIND IT AND THEY WERE NEGLIGENT IN NOT FINDING IT.

3 MS. CANNELLA: THAT IS -- WE SAID IN THE BRIEF, AND
4 IT'S STILL TRUE, INCREDIBLE CLAIMS REQUIRE OR EXTRAORDINARY
5 CLAIMS REQUIRE EXTRAORDINARY EVIDENCE AND THE EVIDENCE IS
6 OPPOSITE OF THAT.

7 WHAT HAPPENED WAS ON OCTOBER 3RD THE STEGALL
8 PLAINTIFFS OUT IN CALIFORNIA, WHO HAVE A CASE AGAINST AUTOLIV,
9 SENT THIS DOCUMENT REQUEST TO AUTOLIV, REQUEST FOR PRODUCTION
10 NUMBER 26: ANY AND ALL WRITINGS PRODUCED BY AUTOLIV ENTITIES
11 IN THE ANDREWS VERSUS MAZDA CASE. AND SO THEN ALL OF US SAID,
12 OH. IT WAS OCTOBER 3RD. OH, WELL, THEY ARE WORKING TOGETHER.
13 OKAY. A TIMELINE IS HELPFUL HERE.

14 OCTOBER 3RD. STEGALL -- I WROTE ON IT. I'M SORRY.
15 STEGALL PLAINTIFFS SENT A REQUEST FOR THE DOCUMENTS. OCTOBER
16 25TH, 21 DAYS LATER, AUTOLIV SENDS ITS GEORGIA COUNSEL THE
17 CONCEALED DOCUMENTS. NOVEMBER 2ND AUTOLIV PRODUCES SEVEN OF
18 THOSE DOCUMENTS TO PLAINTIFF AND NOVEMBER 6 WE GET A HUNDRED
19 AND 77 MORE PAGES THAT HAD BEEN PRODUCED IN STEGALL JANUARY OF
20 2018 -- 2017. EXCUSE ME. EIGHTEEN? EIGHTEEN. THANK YOU.

21 SO LOOKING AT THE TIMELINE BIG PICTURE. IN 2016,
22 DISCOVERY CLOSES; IN 2017, JUDGE DUFFEY GRANTS THE MOTION FOR
23 SUMMARY JUDGMENT. ON JANUARY 2ND, 2018, AUTOLIV PRODUCES A
24 HUNDRED AND 77 PAGES IN STEGALL THAT IT CONCEALS FROM THE
25 ANDREWS PLAINTIFFS.

1 ON MARCH 9TH, THREE MONTHS LATER, TWO MONTHS LATER,
2 WE HAVE ORAL ARGUMENT IN THE ELEVENTH CIRCUIT. AND AUTOLIV
3 NEVER PROVIDED THOSE DOCUMENTS TO US, CAME INTO THE ELEVENTH
4 CIRCUIT, MADE REPRESENTATIONS THAT WERE NOT ACCURATE AND DIDN'T
5 SUPPLEMENT THE RECORD. WE HAD NO IDEA. FORTUNATELY, THE
6 ELEVENTH CIRCUIT REVERSED ANYWAY DESPITE NOT HAVING THE BENEFIT
7 OF THIS INFORMATION. AND THEN AUGUST 15TH, 2018, IS WHEN
8 AUTOLIV CLAIMS TO HAVE FOUND THESE DOCUMENTS.

9 ALL RIGHT. SO THIS IS IMPORTANT FOR THE CLAIM OF
10 INADVERTENCE AND NEGLIGENCE. THE DOCUMENTS WERE ON THE DESKTOP
11 OF THE PROGRAM MANAGER FOR THE SEATBELT. IF THEY HADN'T LOOKED
12 ON THE GUY WHO'S MANAGING THE PROGRAM'S COMPUTER, WHERE ELSE
13 DID THEY NOT LOOK? WHERE ELSE WOULD YOU LOOK? SO EITHER THEY
14 LOOKED AND DIDN'T PRODUCE THEM OR THEY NEVER LOOKED AND THEY
15 COULD CARE LESS ABOUT WHAT THE COURT HAD ORDERED THEM TO DO IN
16 COMPLYING WITH THAT COURT ORDER. THOSE ARE THE ONLY TWO
17 OPTIONS. AND THEN WE HAVE THE REQUEST SENT AND WE'VE TALKED
18 ABOUT THOSE THINGS.

19 SO THE OTHER PROBLEM THAT WE HAVE IS CAPTURED BY WHAT
20 MR. SCRIBNER JUST TOLD THE COURT AT THE END OF HIS ARGUMENT.
21 QUOTE: OUR INVOLVEMENT IS THE CRUX OF THIS CASE. END QUOTE.
22 THAT'S THEIR DEFENSE. IT'S AN APPORTIONMENT DEFENSE, HOW MUCH
23 WERE WE INVOLVED IN THE DESIGN. SO EVEN THOUGH THE ELEVENTH
24 CIRCUIT HAS SAID YOU ARE LIABLE REGARDLESS, AUTOLIV'S PLAN IS
25 STILL TO ARGUE THAT THEY WEREN'T INVOLVED IN THE DESIGN.

1 THE COURT: WELL, HERE IS ANOTHER QUESTION I AM GOING
2 TO ASK MR. SCRIBNER BUT I'LL RUN IT PAST YOU FIRST. PAGE 17,
3 FOOTNOTE 13 OF THE DEFENDANT'S BRIEF. IT SAYS: DESPITE
4 PLAINTIFF'S CONTENTION TO THE CONTRARY, AUTOLIV HAS NEVER
5 ARGUED THAT IT WAS NOT INVOLVED IN THE DESIGN OR MANUFACTURE OF
6 THE SUBJECT SEATBELT ASSEMBLY.

7 MS. CANNELLA: YOUR HONOR, WE POINTED THIS OUT IN OUR
8 RESPONSE BRIEF. IT'S THE SAME, YOU KNOW, COULD SAVE, WOULD
9 SAVE WORD PLAY THING THAT'S HAPPENING. AND, YOU KNOW, WE'VE
10 SPENT -- I LABORED OVER THAT FOOTNOTE AS WELL. WE SPENT YEARS
11 ARGUING ON APPEAL, 17 MONTHS ON APPEAL ARGUING ABOUT ACTIVE
12 INVOLVEMENT. SO, YOU KNOW, THAT'S NOT TRUE.

13 SO THAT'S THE ARGUMENT THAT THEY MADE THAT WE HAD TO
14 DEAL WITH WITHOUT THE EVIDENCE IN THE ELEVENTH CIRCUIT AND IT'S
15 THE ARGUMENT THEY ARE GOING TO MAKE TO THE COURT HERE DURING
16 THE TRIAL. THE PROBLEM WITH THAT IS WE DON'T HAVE ALL THE
17 DOCUMENTS STILL, WHICH IS ONE OF THE REASONS WHY WE SAID, OKAY,
18 AS A POTENTIAL SOLUTION TO THE PROBLEM, LET'S PREVENT AUTOLIV
19 FROM TRYING TO BLAME ANYBODY ELSE, BECAUSE WE CAN'T ADEQUATELY
20 OR COMPLETELY PRESENT THAT INFORMATION TO THE COURT BECAUSE WE
21 DO NOT HAVE IT ALL. THE REASON --

22 THE COURT: HOW DO I HANDLE THAT? IN OTHER WORDS,
23 UNLIKE A JURY, THEY WOULDN'T KNOW IT. BENCH TRIAL. I KNOW NOT
24 THE AMOUNT BUT I KNOW YOU HAVE SETTLED WITH MAZDA. YOU WANT ME
25 AS ONE OF THE THINGS TO STRIKE THE APPORTIONMENT ASPECT, DON'T

1 EVEN ALLOW THE DEFENSE TO PUT THAT IN THE CASE.

2 MS. CANNELLA: YOUR HONOR, THIS IS A SANCTION. THERE
3 IS A CONSEQUENCE FOR THIS KIND OF CONDUCT.

4 THE COURT: I JUST WANT YOU TO TELL ME WHY I SHOULD
5 APPLY THAT SANCTION.

6 MS. CANNELLA: BECAUSE, YOUR HONOR, IT IS THE ONLY
7 WAY FOR THIS PLAINTIFF, FOR FUTURE PLAINTIFFS TO GET ANY KIND
8 OF COMPLIANCE WITH ORDERS LIKE WE HAVE IN THIS CASE.

9 MS. ANDREWS AND PLAINTIFFS IN ANY COURT HAVE THE
10 RIGHT TO RELY UPON THE REPRESENTATIONS THAT AUTOLIV MADE TO
11 JUDGE ANAND WHEN IT SAID WE ARE PRODUCING EVERYTHING. WE ARE
12 NOT GOING TO WITHHOLD ANYTHING. WE ARE GOING TO PRODUCE
13 EVERYTHING. SO THAT WHEN WE GO TO THE ELEVENTH CIRCUIT, WE CAN
14 PUT IT ALL ON THE TABLE. LET'S HEAR IT. LET'S MAKE A
15 DECISION. WHEN WE GO TO THE DISTRICT COURT ON A MOTION FOR
16 SUMMARY JUDGMENT FOR THE TRIAL --

17 THE COURT: LET'S SAY HYPOTHETICALLY, HYPOTHETICALLY,
18 DEFENDANTS, OKAY, I SAY, YEAH, THEY SHOULD HAVE PRODUCED THAT
19 TO YOU. THERE WAS SOME NEGLIGENCE. I SAY IT WAS -- IT MAY
20 HAVE NOT BEEN A SMOKING GUN, BUT IT WAS SIGNIFICANT. THERE
21 SHOULD BE A SANCTION. BUT THAT PARTICULAR SANCTION, IF I AM
22 UNDERSTANDING WHAT YOU ARE ASKING ME CORRECTLY, IS BASICALLY
23 SAYING HOLD AUTOLIV RESPONSIBLE NOW FOR ALL OF IT.

24 MS. CANNELLA: NO, YOUR HONOR.

25 THE COURT: OKAY.

1 MS. CANNELLA: IT'S SAYING THAT ONE DEFENSE,
2 APPORTIONMENT DEFENSE, THE ONE DEFENSE OF BLAMING OTHER PARTIES
3 IS ONE THEY CANNOT MAKE. WE STILL HAVE TO -- WE STILL HAVE TO
4 PROVE DEFECT, REASONABLENESS. WE HAVE TO PROVE THAT THE DEFECT
5 CAUSED THE INJURY AND WE HAVE TO PROVE DAMAGES.

6 THE COURT: I AGREE. BUT I AM STILL TAKING MAZDA
7 COMPLETELY OUT OF THE PICTURE WHEN DEALING WITH THAT PARTICULAR
8 ISSUE IF I AGREE WITH YOU ON THIS SANCTION.

9 MS. CANNELLA: SORRY? SAY THAT AGAIN.

10 THE COURT: IF I AGREE WITH YOU ON THE SANCTION, THAT
11 IS THE ONE ISSUE THAT MAZDA WOULD NOT BE INVOLVED IN.

12 MS. CANNELLA: THAT'S TRUE. IT'S A SANCTION. BUT
13 THE PROBLEM IS WE CAN'T LITIGATE THE CASE WITHOUT THE SANCTION,
14 BECAUSE WE DON'T HAVE ALL THE DOCUMENTS, AND I AM GOING TO SHOW
15 SOME YOU SOME OF THE REASONS WE KNOW THAT.

16 OKAY. SO THE DEVELOPMENT SCHEDULE. THIS COMES FROM
17 THE DEVELOPMENT SCHEDULE THAT WE LOOKED AT EARLIER TODAY. IT
18 TALKS ABOUT A DRAWING ACCEPTANCE MEETING. WE DON'T HAVE ANY
19 EVIDENCE OF THAT, THAT THAT TOOK PLACE. WE DON'T HAVE ANY
20 MEETING NOTES OR ANYTHING LIKE THAT. IT TALKS ABOUT PROTOTYPE
21 DRAWINGS. WE NEVER GOT THOSE. AND THE VA/VE PROPOSALS, WE
22 LOOKED AT THIS DOCUMENT WITH MR. MEYER EARLIER. THESE, ALL
23 THREE OF THESE WE DO NOT HAVE.

24 OKAY. SO WHAT DOES THAT TELL YOU? OH, DO WE NEED
25 THE VA/VE PROPOSAL TALKING ABOUT SEWING FOR THE BELT? NO, WE

1 DON'T. BUT THERE ARE OTHERS OUT THERE. AND YOUR HONOR'S POINT
2 ABOUT THESE NOT BEING SMOKING GUNS, WE DON'T HAVE THE SMOKING
3 GUN. WE DON'T HAVE IT BECAUSE THEY HAVEN'T PRODUCED IT TO US.
4 AND THIS COURT CANNOT HAVE ANY ASSURANCE THAT AUTOLIV WOULD
5 PRODUCE IT TO US. THE ONLY REASON WE GOT THESE DOCUMENTS IS
6 BECAUSE THEY PRODUCED THEM IN STEGALL. WE WOULDN'T HAVE THESE
7 EITHER.

8 SO TO SAY THAT THE DOCUMENTS AREN'T IMPORTANT
9 TOTALLY -- AUTOLIV HAS TOTALLY MISSED THE POINT. THE POINT IS
10 YOU GUYS HAVEN'T PRODUCED EVERYTHING TO US. HOW ARE WE
11 SUPPOSED TO KNOW WHAT'S OUT THERE? THESE ARE EVIDENCE THAT WE
12 CAN SHOW YOU TO SAY YOU CAN FEEL COMFORTABLE WHEN YOU RULE. IF
13 YOU WERE TO GRANT A SANCTION IN THIS CASE, YOU CAN FEEL
14 COMFORTABLE THAT IN YOUR ORDER YOU CAN SAY PLAINTIFFS PRESENTED
15 EVIDENCE THAT NOT ALL DOCUMENTS HAVE BEEN PRODUCED, SO WE STILL
16 KNOW THAT WE ARE STILL AT A DISADVANTAGE. AND WHAT ELSE IS OUT
17 THERE? ONLY AUTOLIV KNOWS BUT AUTOLIV CAN'T BE TRUSTED TO GIVE
18 US THAT INFORMATION BECAUSE IT HASN'T.

19 THE OTHER RESPONSIVE DOCUMENT THAT AUTOLIV STILL HAS
20 NOT PRODUCED IN THIS CASE AND HAS ONLY PRODUCED IN STEGALL IS
21 THIS EXTREMELY -- HONESTLY, THIS IS A SMOKING GUN DOCUMENT.
22 THIS IS A DOCUMENT THAT SAYS AUTOLIV DESIGNED, MANUFACTURED AND
23 SOLD THIS SPECIFIC RETRACTOR BEFORE IT EVER STARTED THE MAZDA
24 PROGRAM. THAT IS ONE HUNDRED PERCENT CONTRARY TO WHAT IT HAS
25 BEEN TELLING THE COURT FOR THE LAST THREE YEARS. SO THAT'S A

1 SMOKING GUN.

2 WHEN WE GOT THE STATEMENT OF WORK AND THE FIRST SEVEN
3 DOCUMENTS, WE WENT THROUGH THEM AND WE PULLED OUT ALL THE
4 REFERENCES TO WHAT LOOKED LIKE DOCUMENTS TO US, THINGS LIKE
5 BENCHMARK REPORTS, NEW TECHNOLOGY, NEW PRODUCT PROPOSALS. AND
6 KEEP IN MIND THAT NEW TECHNOLOGY, NEW PRODUCT PROPOSAL, THAT'S
7 SOMETHING THAT THE BUSINESS TRADE AGREEMENT REQUIRED AUTOLIV TO
8 DO FOR MAZDA. YOU HAVE TO GIVE US NEW TECHNOLOGY, INFORMATION
9 ABOUT NEW TECHNOLOGIES.

10 OKAY. SO THERE IS A DETAILED STATEMENT OF WORK.
11 THERE IS A COST ESTIMATION ANALYSIS SHEET. THERE'S 80
12 DIFFERENT ITEMS AND THEY ARE ALL IN THIS POWERPOINT THAT I HAVE
13 GIVEN YOU A COPY OF. BUT PMT ACTIVITY GUIDELINES, USES,
14 CONDITION, INFORMATION, DESIGN CHANGE, ENGINEERING AUDIT
15 RECORD, ALL THESE THINGS THAT WE KIND OF PULLED FROM THE
16 STATEMENT OF WORK.

17 THIS IS A DOCUMENT THAT AUTOLIV HAD THAT GOVERNED ITS
18 RELATIONSHIP WITH MAZDA AND THESE ARE THINGS THAT APPEAR TO BE
19 DOCUMENTS THAT WERE NOT GIVEN TO US. SO WE WROTE AUTOLIV AND
20 WE SAID, HEY, HERE IS A LIST OF THINGS THAT WE CAN FIND. WHAT
21 ABOUT THIS STUFF? AND THEY WROTE BACK AND THEY SAID, OH, WE
22 COULDN'T FIND ANY OF THAT STUFF. SOME OF IT IS NOT EVEN -- WE
23 ARE NOT EVEN SURE IT'S DOCUMENTS. SO THAT'S ANOTHER PIECE OF
24 EVIDENCE THAT THE COURT HAS THAT WE ARE MISSING DOCUMENTS THAT
25 COULD BE VERY IMPORTANT.

1 NOW, THIS CLAIM THAT THE DOCUMENTS WERE INADVERTENTLY
2 NOT PRODUCED. I TRIED TO KIND OF REMEMBER EVERYTHING WHEN I
3 WAS TYPING THIS OUT, AND HOPEFULLY THIS IS A RELATIVELY
4 COMPLETE LIST, BUT THE REASONS THAT THAT'S NOT A VALID ARGUMENT
5 IS, ONE, THEY VIOLATED THE COURT ORDERS; TWO, THEY MISLED THE
6 COURT IN ITS ROLE REGARDING THE DESIGN AND THE EXISTENCE OF
7 DOCUMENTS REFLECTING THE EVOLUTION OF DESIGN. THAT'S
8 IMPORTANT. YOU CAN'T DO THAT.

9 NUMBER THREE. THEY USED THE CONCEALMENT TO ASSERT A
10 FALSE DEFENSE OF NO ACTIVE INVOLVEMENT. AND THIS IS REALLY
11 WHAT SETS THIS CASE APART, BECAUSE IF YOU DON'T HAVE THE
12 DOCUMENTS, IF YOU DIDN'T LOOK ON THE COMPUTER FOR THE MAN WHO
13 MANAGED THE ENTIRE PROGRAM BECAUSE YOU HAD, YOU KNOW, A BRAIN
14 FART THAT DAY, THEN YOU STILL KNOW THE TRUTH. YOU ALWAYS KNEW
15 THE TRUTH. YOU ALWAYS KNEW THE TRUTH AND THE TRUTH WAS NOT
16 WHAT WAS SAID IN THE BRIEFS TO THE COURT. THAT'S WHY THIS CASE
17 IS DIFFERENT FROM A REGULAR, WHOOPS, WE MISSED THAT DOCUMENT.

18 WE ARE -- THE BAD FAITH IS ALSO EVIDENT AND AFTER
19 HAVING DONE THOSE THINGS, THEN TURNING AROUND AND SEEKING
20 ATTORNEY'S FEES AGAIN MS. ANDREWS, A WIDOW, AGAINST A HUGE
21 GLOBAL CORPORATION, ONE OF THE BIGGEST SEATBELT MANUFACTURERS,
22 SAFETY EQUIPMENT MANUFACTURERS IN THE WORLD, AFTER YOU KNOW
23 THAT YOU HAVE JUST WON SUMMARY JUDGMENT THAT YOU SHOULDN'T HAVE
24 WON HAD WE KNOWN ALL THE FACTS. THEN YOU TURN AROUND AND YOU
25 SEEK ATTORNEY'S FEES AGAINST HER AND PREVAIL ON THAT.

1 THEN, JANUARY 2ND, 2018, AUTOLIV FINDS A HUNDRED AND
2 77 PAGES OF DOCUMENTS THAT THEY PRODUCE IN STEGALL. THEY STILL
3 DON'T GIVE THEM TO US. THEY STILL DON'T GIVE THEM TO US. OUR
4 CASE IS STILL PENDING. WE'VE GOT ORAL ARGUMENT COMING UP. WE
5 STILL DON'T GET THESE DOCUMENTS.

6 THEN THEY GO TO THE ELEVENTH CIRCUIT AND MISREPRESENT
7 AGAIN. THESE 177 DOCUMENTS, MANY OF THESE ARE THE ONES THAT WE
8 ARE TALKING ABOUT. SO THAT'S MORE EVIDENCE.

9 FAILING TO CORRECT THE RECORD AT ORAL ARGUMENT IN
10 MARCH 2018 AND THEN CAUSING MORE THAN 17 MONTHS OF DELAY. ALL
11 THE WHILE THERE IS ALWAYS THE RISK THAT WE LOSE AND THAT THE
12 WHOLE CASE GOES AWAY, WASTING RESOURCES OF THIS COURT, OF THE
13 ELEVENTH CIRCUIT, CONTINUING TO CONCEAL DOCUMENTS TO THIS DAY.
14 I MEAN WE EVEN KNOW THERE IS ONE DOCUMENT THAT THEY HAVEN'T
15 PRODUCED IN OUR CASE AT ALL THAT WE TALKED ABOUT, THAT
16 RETRACTOR DOCUMENT WITH A COMPLETION DATE.

17 AND THEN ON TOP OF ALL OF THAT JUST BEING COMPLETELY
18 UNREPENTANT. IT IS -- THE DEFENSE IS NOT, YOU KNOW, WE ADMIT
19 THAT WE MISREPRESENTED THESE THINGS. THE DEFENSE IS, OH, THESE
20 ARE ALL DOCUMENTS ABOUT A FOAM COVER AND, YOU KNOW, SEWING ON A
21 SEATBELT. THAT'S NOT TRUE. THAT'S NOT WHAT HAPPENED. THESE
22 ARE IMPORTANT DOCUMENTS AND I HOPE I WAS ABLE TO COMMUNICATE
23 THAT BY COMPARING THEM TO THE COURT'S ORDER.

24 THE COURT: YOU DID.

25 MS. CANNELLA: ANOTHER THING THAT I WANT TO MENTION

1 THAT'S EVIDENCE OF BAD FAITH IS THIS TEAM LIST DOCUMENT. IT
2 WAS PRODUCED AS AUTOLIV 1026 BACK IN 2015. OKAY. THIS A TEAM
3 LIST. IT'S IN JAPANESE AND IT'S GOT, YOU KNOW, ALL THESE
4 DIFFERENT PEOPLE IN IT.

5 WELL, ONE OF THE NEW DOCUMENTS THAT WE GOT NOVEMBER
6 2ND, 2018, IS TOLLGATE-1, WHICH IS ONE OF THE DOCUMENTS WE
7 TALKED ABOUT WITH MR. MEYER. IT'S ONE OF THE IMPORTANT
8 DOCUMENTS. AND IN TOLLGATE-1 -- THIS IS THE TRANSLATED
9 VERSION, OKAY? SO THIS HAS GOT THE ENGLISH NAMES IN IT. BUT
10 IN TOLLGATE-1 IS THE EXACT SAME TEAM LIST. IT APPEARS TO HAVE
11 BEEN PULLED OUT OF THE TOLLGATE-1 BACK IN 2015 AND GIVEN US ONE
12 DOCUMENT, BECAUSE WE SPECIFICALLY ASKED ABOUT THIS TEAM LIST IN
13 2015, BUT THEY DIDN'T GIVE US THE REST OF THE DOCUMENTS UNTIL
14 THEY ACCIDENTALLY GAVE IT TO THE STEGALL PEOPLE AND WE FOUND
15 OUT ABOUT IT. SO THAT'S MORE EVIDENCE OF BAD FAITH.

16 I SKIPPED OVER A LOT OF STUFF, BUT I THINK --
17 THE COURT: THAT'S MY FAULT. I STARTED ASKING YOU
18 QUESTIONS AND YOU DID LIKE A GOOD LAWYER. YOU WENT TO ANSWER
19 THE QUESTION I ASKED YOU.

20 MS. CANNELLA: WELL, I AM HAPPY TO ANSWER YOUR
21 QUESTIONS. I AM MUCH MORE INTERESTED IN THAT THAN MY
22 BLABBERING. SO A LOT OF THE STUFF WE COVERED WITH MR. MEYER
23 AND WE DON'T NEED TO REHASH IT SINCE WE WERE ABLE TO DO HIM
24 FIRST.

25 BUT I DO WANT TO TALK A LITTLE BIT ABOUT THE LAW.

1 RULE 37(B) ALLOWS, WHEN THERE IS A VIOLATION OF A DISCOVERY
2 ORDER, TO ISSUE A SANCTION. IN ORDER TO AVOID THE SANCTION, IN
3 FACT, AUTOLIV HAS TO PROVE IT, QUOTE, MADE ALL REASONABLE
4 EFFORTS TO FOLLOW THE COURT'S ORDER. THAT'S IN THAT IN RE
5 CHASE VERSUS -- THE CHASE AND SANBORN CASE FROM THE ELEVENTH
6 CIRCUIT.

7 AUTOLIV CANNOT DO THAT. THE DOCUMENTS WERE ON THE
8 COMPUTER OF THE PROGRAM MANAGER FOR THE SEATBELT. SOME OF THEM
9 WERE PRODUCED IN STEGALL NEARLY A YEAR BEFORE WE GOT THEM. AND
10 SO AUTOLIV HASN'T INTRODUCED ANY EVIDENCE TO MEET THAT BURDEN.
11 THERE IS NO AFFIDAVIT TESTIMONY. THERE IS NO WITNESS THAT I
12 KNOW OF HERE TODAY TO TALK ABOUT THAT. AND SO IT'S CONCLUSORY
13 STATEMENTS UNDER THE LAW HAVE TO BE DISREGARDED. THERE IS NO
14 EVIDENCE OF REASONABLE EFFORTS.

15 THE QUESTION IS NOT WHETHER TO ISSUE SANCTIONS. IT
16 IS WHICH SANCTIONS TO AWARD. AND THE BRIEFING GOES THROUGH
17 THREE DIFFERENT REASONS WHY THE COURT HAS THE POWER TO AWARD
18 SANCTIONS, BUT, YOU KNOW, THAT'S NOT REALLY -- THERE IS NO
19 QUESTION ABOUT THAT, SO I AM NOT GOING TO GO THROUGH ALL OF
20 THOSE.

21 37(B) TALKS ABOUT THE OPTIONS. THE FIRST ONE:
22 ENTERING DEFAULT. YOU COULD ALSO DIRECT CERTAIN FACTS TO BE
23 TAKEN AS TRUE. YOU COULD PROHIBIT AUTOLIV FROM SUPPORTING OR
24 OPPOSING DESIGNATED CLAIMS OR DEFENSES OR YOU COULD PROHIBIT
25 AUTOLIV FROM INTRODUCING DESIGNATED MATTERS INTO EVIDENCE.

1 THOSE ARE THE OPTIONS THAT THE LAW GIVES YOU.

2 SO FEDERAL LAW HAS A POLICY OF NOT JUST REMEDYING THE
3 PROBLEM BUT PUNISHING THE CONDUCT, ESPECIALLY WHERE IT
4 UNREASONABLY DELAYS OR OTHERWISE INTERFERES WITH THE, QUOTE,
5 EXPEDITIOUS MANAGEMENT OF TRIAL PREPARATION. THAT'S THE
6 GOFORTH V. OWENS IN OUR BRIEF FROM THE ELEVENTH CIRCUIT.

7 SO TO SAY THAT WE WERE NOT PREJUDICED ALSO IGNORES
8 ELEVENTH CIRCUIT CASE LAW THAT RECOGNIZES DELAY IN ITSELF IS
9 PREJUDICE.

10 AUTOLIV'S CONDUCT CERTAINLY CAUSED UNREASONABLE
11 DELAY. IT CERTAINLY INTERFERED WITH THE EXPEDITIOUS MANAGEMENT
12 OF TRIAL PREPARATION, VIOLATED COURT ORDERS AND CONCEALED
13 CRUCIAL EVIDENCE FOR OVER THREE YEARS, ALL THE WHILE MAKING
14 MISREPRESENTATIONS. WHAT IT'S DONE IS WORSE THAN DELAY. IT'S
15 DECEIT. AND PLAINTIFF'S COUNSEL DOESN'T SAY THIS LIGHTLY. AND
16 TO BE CLEAR, THIS DOESN'T HAVE ANYTHING TO DO WITH DEFENSE
17 COUNSEL. IT'S JUST SIMPLY NOT POSSIBLE TO CONCLUDE OTHERWISE
18 THAN THAT THIS WAS A DECEITFUL, A DECEITFUL CONDUCT.

19 THERE ARE INDISPUTABLY MORE DOCUMENTS OUT THERE THAT
20 WE DO NOT HAVE. THAT FACT IS PROVEN BY THE DOCUMENTS WE DO
21 HAVE. WHETHER AUTOLIV KNEW THE DOCUMENTS EXISTED OR HAD
22 LOCATED THEM OR, QUOTE, IDENTIFIED THEM IS COMPLETELY BESIDE
23 THE POINT AS I DISCUSSED BEFORE. IT IS THE FACT THAT AUTOLIV
24 MAINTAINED THE DEFENSE IT DID KNOWING THAT IT WASN'T TRUE.

25 SOMETHING VERY IMPORTANT IS IN AUTOLIV'S RESPONSE

1 BRIEF. AUTOLIV SAYS THAT ISSUE PRECLUSION, PRECLUDING AUTOLIV
2 FROM ARGUING THAT MAZDA IS AT FAULT IS AKIN TO DEFAULT FOR
3 AUTOLIV. WHY IS THAT? BECAUSE THE DESIGN IS NOT DEFENSIBLE.
4 THAT'S WHAT THAT ADMITS. THEY ARE SAYING IF WE CAN'T COME IN
5 AND BLAME SOMEBODY ELSE, THEN WE ARE NOT GOING TO BE ABLE TO
6 SURVIVE. WE ARE GOING TO BE HELD LIABLE. BECAUSE THE DESIGN
7 IS DEFECTIVE. IT'S DEFECTIVE.

8 THERE IS NO QUESTION THAT AUTOLIV IS TALKING ABOUT
9 OTHERS. THAT'S MAZDA. THEY ARE TALKING ABOUT MAZDA. AND THEY
10 ARE STILL TRYING TO BLAME MAZDA FOR THE DESIGN OF A SEATBELT
11 THAT AUTOLIV DESIGNED, MANUFACTURED, SOLD, PROFITED FROM. AS
12 MR. MEYER SAID, THIS DEFECTIVE SEATBELT IS SO BAD, 17 INCHES,
13 IT'S SO BAD IT SHOULD NOT BE SOLD TO ANYONE. THERE IS NO
14 DEFENSE IN GEORGIA LAW THAT SAYS YOU ARE NOT LIABLE IF SOMEONE
15 TELLS YOU TO DO IT. IN PRODUCT DESIGN, IT DOESN'T EXIST. IF
16 YOU MANUFACTURE SOMETHING THAT'S DEFECTIVE AND IT'S DEFECTIVE
17 WHEN IT LEAVES YOUR HANDS, YOU ARE ON THE HOOK FOR WHATEVER
18 INJURIES IT CAUSES. THAT'S WHAT THE ELEVENTH CIRCUIT HELD.
19 ONCE YOU ARE A MANUFACTURER YOU ARE LIABLE IF IT'S DEFECTIVE.

20 AUTOLIV WANTS TO APPORTION SOME OF THE FAULT FOR
21 MR. ANDREWS' DEATH TO THE AUTO MANUFACTURER TO WHOM AUTOLIV
22 ITSELF SOLD THE DEFECTIVE PRODUCT. IT'S THEIR FAULT BECAUSE
23 THEY BOUGHT IT. IT'S NOT OUR FAULT BECAUSE WE MADE IT. IT'S
24 THEIR FAULT BECAUSE THEY BOUGHT IT. THAT'S THE ARGUMENT. IT'S
25 AS RIDICULOUS AS IT SOUNDS.

1 THE COURT: WELL, HIS ARGUMENT IS MORE OR LESS THEY
2 HAD THE FINAL WORD, NOT IT WAS THEIR FAULT BECAUSE THEY BOUGHT
3 IT. BUT IS AUTOLIV REALLY ARGUING WE MAY HAVE DESIGNED IT OR
4 MANUFACTURED IT BUT ANY CHANGES, THE FINAL DECISION WAS
5 MAZDA'S?

6 MS. CANNELLA: ANY CHANGES TO THE PRODUCT THAT
7 AUTOLIV MANUFACTURED. THEIR ARGUMENT, AS I UNDERSTAND IT, IS
8 AUTOLIV -- OR MAZDA ASKED US FOR THIS DESIGN.

9 THE COURT: NOW, I'M NOT SAYING I AGREE WITH THE
10 ARGUMENT.

11 MS. CANNELLA: YES; OH, YES. NO, I HEAR WHAT YOU ARE
12 SAYING.

13 MY UNDERSTANDING OF THE ARGUMENT IS MAZDA ASKED FOR
14 THIS PRODUCT AND THEY TOLD US IF THEY WANTED ANY CHANGES. AND
15 IF AT THE END OF THE DAY THEY WANT A PRODUCT THAT IS DEFECTIVE,
16 IT'S NOT OUR FAULT IF THEY BOUGHT IT.

17 THE COURT: YES, THAT'S THE ARGUMENT I UNDERSTAND.
18 THAT'S HOW I UNDERSTAND THE ARGUMENT. WE GAVE THEM WHAT THEY
19 ASKED FOR.

20 MS. CANNELLA: WE GAVE THEM WHAT THEY ASKED FOR. AND
21 THE ELEVENTH CIRCUIT REJECTED THAT ARGUMENT.

22 THE OTHER THING THAT IS IMPORTANT ABOUT AUTOLIV
23 SAYING THAT THE DESIGN -- THAT IF IT CAN'T BLAME MAZDA, THEN
24 THAT'S AKIN TO DEFAULT.

25 THE COURT: DID THE ELEVENTH CIRCUIT REALLY SAY THAT,

1 THOUGH? IN OTHER WORDS, I'VE READ THIS OPINION NOW FOUR TIMES.
2 I READ IT AGAIN LAST NIGHT. IT'S A SHORT OPINION, FIVE PAGES.
3 BUT THEY MORE OR LESS SAY IF YOU MANUFACTURED IT, YOU ARE MORE
4 OR LESS STILL IN THE CASE AS FAR AS SUMMARY JUDGMENT. AND I
5 MAY HAVE -- AGAIN, I MAY HAVE READ IT WRONG.

6 MS. CANNELLA: SO THE ELEVENTH CIRCUIT OPINION AS I
7 READ IT, AND YOU'VE ACTUALLY READ IT MORE RECENTLY THAN I HAVE,
8 BUT IT SAID THAT IF YOU ARE A MANUFACTURER, IT DOESN'T MATTER
9 IF YOU ARE INVOLVED IN THE DESIGN. IF YOU MANUFACTURE IT --

10 THE COURT: WELL, LET'S DON'T GUESS. LET'S JUST READ
11 IT.

12 GO AHEAD. I'M LISTENING TO YOU.

13 MS. CANNELLA: BUT THE LAW IN GEORGIA IS IF YOU
14 MANUFACTURE A DESIGN AND IT LEAVES YOUR HANDS DEFECTIVE AND
15 THAT DEFECT IS THE ONE THAT KILLED SOMEBODY, THEN YOU ARE
16 RESPONSIBLE FOR THE DEATH. THAT'S THE LAW.

17 THE COURT: ON PAGE THREE, AND I MAY NOT BE PICKING
18 OUT THE RIGHT PART TO READ, IT SAYS: "AUTOLIV MANUFACTURED
19 SEATBELT COMPONENTS IN THE DECEASED'S MAZDA AND PLAINTIFF
20 ALLEGES THAT THOSE COMPONENTS WERE DEFECTIVE WHEN SOLD.
21 CONSEQUENTLY, AUTOLIV CAN BE HELD LIABLE UNDER SECTION 51-1-11
22 IF A COMPONENT IT MANUFACTURED WAS DEFECTIVE WHEN SOLD BY THE
23 MANUFACTURER AND IF THE COMPONENT'S CONDITION WHEN SOLD IS THE
24 PROXIMATE CAUSE OF THE INJURY SUSTAINED UNDER SECTION
25 51-1-11(B)1. THAT SAID, EVEN IF PLAINTIFF WERE REQUIRED TO

1 ESTABLISH THAT AUTOLIV WAS ACTIVELY INVOLVED IN THE DESIGN OF
2 THE SEATBELT ASSEMBLY IN ORDER TO SHOW THAT AUTOLIV CAN BE HELD
3 LIABLE UNDER SECTION 51-1-11, THE RECORD REFLECTS A GENUINE
4 ISSUE OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT ON THIS
5 ISSUE."

6 SO DID THEY QUITE GO THAT EXTRA STEP THAT YOU ARE
7 ARGUING OR DID THEY MORE OR LESS SAY THIS GETS YOU PAST SUMMARY
8 JUDGMENT?

9 MS. CANNELLA: I'M SORRY? WHAT'S THE EXTRA STEP?
10 BECAUSE I'M NOT CLEAR. I FEEL LIKE I AM SAYING WHAT THEY ARE
11 SAYING, BUT WHAT PART OF IT IS --

12 THE COURT: OKAY. I MAY BE -- I MAY NOT HAVE HEARD
13 YOU CORRECTLY.

14 MS. CANNELLA: WELL, AND I WANT TO MAKE SURE I
15 UNDERSTAND THE COURT'S QUESTION, BECAUSE I DO THINK IT'S
16 IMPORTANT, WHAT YOU ARE SAYING.

17 THE COURT: WELL, NOT SO MUCH AN EXTRA STEP. IT'S
18 JUST THAT, AS I SEE IT, THEY ARE SAYING THE MERE FACT THEY
19 MANUFACTURED IT CREATES A GENUINE ISSUE OF MATERIAL FACT
20 PRECLUDING SUMMARY JUDGMENT ON THIS ISSUE. SO WE MAY BE SAYING
21 THE SAME THING.

22 MS. CANNELLA: I THINK WE ARE SAYING THE SAME THING.

23 THE COURT: I'LL TAKE IT AT THAT.

24 MS. CANNELLA: OKAY, OKAY.

25 YES, IF YOU MANUFACTURE, IF AUTOLIV MANUFACTURERS THE

1 PRODUCT AND THE FACT FINDER FINDS THAT THE PRODUCT IS
2 DEFECTIVE, THEN REGARDLESS OF ACTIVE INVOLVEMENT, THERE IS A
3 STATUTE RIGHT ON POINT THAT'S VERY CLEAR. THAT WAS OUR WHOLE
4 ARGUMENT ON APPEAL. IT'S JUST A PLAIN STATUTORY ARGUMENT.

5 THE COURT: 51-1-11.

6 MS. CANNELLA: THAT'S RIGHT. AND THERE IS A STATUTE
7 THAT SAYS IF IT'S DEFECTIVE WHEN IT LEAVES YOUR HANDS AND THAT
8 DEFECT CAUSES SOMEONE'S INJURY, YOU ARE ON THE HOOK, SO -- AND
9 AUTOLIV, YOU KNOW, THERE IS NO QUESTION THAT AUTOLIV
10 MANUFACTURED IT.

11 THE FACT THAT AUTOLIV'S DEFENSE IS A
12 WE-WEREN'T-ACTIVELY-INVOLVED DEFENSE SHOWS PRECISELY WHY THESE
13 ARE THE DOCUMENTS THAT GOT CONCEALED. THESE ARE THE DOCUMENTS
14 THAT MATTER TO US. SO TO CONCLUDE THAT BY SOME COINCIDENCE
15 THAT AUTOLIV CONCEALED THE DOCUMENTS THAT HELPED DEFEAT ALL
16 THOSE STATEMENTS IN THE COURT'S ORDER THAT WOULD HAVE
17 CONTRADICTED EVERYTHING THAT JUDGE DUFFEY CONCLUDED BY A
18 COINCIDENCE AND THAT IT JUST SO HAPPENS THAT THOSE ARE THE ONES
19 THAT DIDN'T TURN UP IS NOT CREDIBLE. IT'S NOT CREDIBLE.

20 IF THESE ARE THE DOCUMENTS THAT THEIR ENTIRE DEFENSE
21 DEPENDS UPON AND THESE ARE THE ONES THAT WEREN'T CONCEALED OR
22 THAT WERE CONCEALED THAT WEREN'T PRODUCED, WHY, WHY ARE THESE
23 THE ONES THAT HAPPENED TO NOT GET PRODUCED? WHY ARE THE MOST
24 IMPORTANT ONES THE ONES THAT DIDN'T TURN UP IN THE SEARCH? IT
25 JUST DOESN'T MAKE ANY SENSE. IT'S NOT CREDIBLE.

1 NOW, DEFAULT IS THE MOST SERIOUS SANCTION. THE COURT
2 CAN ENTER DEFAULT. WE HAVE ASKED FOR DEFAULT. BUT THERE IS A
3 LESSER SANCTION AND THE LESSER SANCTION IS PERFECTLY, LIKE A
4 GLOVE, TAILORED TO THE CONDUCT IN THE CASE. AND THAT LESSER
5 SANCTION -- THERE'S A NUMBER OF THINGS, BUT ONE OF THEM IS TO
6 PROHIBIT AUTOLIV FROM INTRODUCING EVIDENCE OR ARGUMENT THAT
7 OTHER PARTIES ARE AT FAULT. IF WE DIDN'T GET THE STUFF THAT
8 HELPS US DECIDE IF THEY ARE ACTIVELY INVOLVED, THEN LET'S JUST
9 TAKE THAT OUT OF THE CASE AND WE DON'T HAVE TO WORRY ABOUT IT
10 ANYMORE.

11 IF YOUR HONOR HAS ANY MORE QUESTIONS, I WOULD BE
12 HAPPY TO ANSWER THEM, BUT THAT'S ALL I HAVE TO SAY.

13 THE COURT: THANK YOU.

14 MS. CANNELLA: THANK YOU.

15 MR. SCRIBNER: WELL, UNCHARTED TERRITORY. I'VE NEVER
16 HAD TO DEFEND AGAINST A MOTION FOR SANCTIONS. I AM HOPING THIS
17 IS MY FIRST AND MY LAST.

18 THE COURT: WELL, LET ME MAKE IT QUITE CLEAR. THEY
19 ARE NOT BLAMING YOU.

20 MR. SCRIBNER: UNDERSTOOD, UNDERSTOOD, AND I
21 APPRECIATE THAT. THAT'S VERY MUCH APPRECIATED. I ONLY KNOW
22 HOW TO START AT THE BEGINNING.

23 OCTOBER 11, 2018, AT 9:04 A.M. CERTAIN AUTOLIV
24 DOCUMENTS WERE FORWARDED TO ME VIA EMAIL. MR. PRENTKOWSKI HAD
25 RECEIVED THEM THE NIGHT BEFORE FROM AUTOLIV JAPAN. HE IS A

1 SEATBELT ENGINEER. HE WORKS IN THE LEGAL DEPARTMENT. HE
2 SPEAKS ENGLISH. AND HE OFTENTIMES WILL COMMUNICATE WITH FOLKS
3 INVOLVED IN A SEATBELT MANUFACTURING SITUATION THAT END UP IN
4 LITIGATION, INCLUDING HERE WITH THESE JAPANESE-SPEAKING
5 WITNESSES. HE IS THE INTERFACE. HE WAS ALSO OUR CORPORATE
6 REPRESENTATIVE, MR. PRENTKOWSKI, WHO TESTIFIED ON BEHALF OF
7 AUTOLIV IN THIS CASE.

8 THE DOCUMENTS WERE EMAILED TO MR. PRENTKOWSKI FROM
9 AUTOLIV JAPAN IN CONNECTION WITH THE STEGALL CASE. HE WAS
10 GETTING READY FOR A 30(B)(6) DEPOSITION.

11 THE STEGALL CASE INVOLVES A PASSENGER SEATBELT
12 ASSEMBLY, AND JUST CANDIDLY, JENNY, JAY AND I, YOU KNOW, WE
13 WEREN'T PAYING ATTENTION TO THAT CASE. IT JUST DIDN'T FEEL
14 LIKE THAT MATTERED TO US. WE WEREN'T KEEPING UP WITH IT.

15 A LOT OF THESE DOCUMENTS WERE IN JAPANESE. I DON'T
16 SPEAK JAPANESE. I BRIEFLY SCANNED THEM AND I THOUGHT I'M NOT
17 FAMILIAR WITH ALL DOCUMENTS PRODUCED IN THIS CASE BUT THESE
18 DON'T LOOK FAMILIAR TO ME AT ALL.

19 AND SO I WANT TO MAKE SURE THAT THE COURT UNDERSTANDS
20 ONE THING, BECAUSE I THINK IT'S IMPORTANT. IN THEIR REPLY
21 BRIEF, THEY SAY THAT MR. PRENTKOWSKI HAD BEEN SITTING ON THESE
22 DOCUMENTS FOR MONTHS. THAT'S A HUNDRED PERCENT INCORRECT. HE
23 WAS DEPOSED IN THAT CASE, RIGHT? THE STEGALL CASE. AND THEY
24 SAY, WHEN DID YOU SEE THESE DOCUMENTS? AND HERE IS THE QUOTE
25 FROM HIS DEPOSITION: "I DON'T REMEMBER THE EXACT DATE.

1 SOMETIME IN THE LAST 90 DAYS, PERHAPS." AND IT'S TRUE, HE DID
2 RECEIVE THEM SOMETIME WITHIN THE LAST 90 DAYS. BUT I HAVE A
3 DATE STAMP ON THE DOCUMENT THAT HE SENT TO ME AND IT LITERALLY
4 WAS THE NIGHT BEFORE AT 11:21.

5 HE GOT THESE DOCUMENTS IN PREPARATION FOR THE
6 30(B)(6) AND WITHIN TEN HOURS SENT THEM TO ME. I LOOKED AT
7 THEM AND I SAID, WHOA, I DON'T KNOW THAT I HAVE SEEN THESE
8 BEFORE. AND WE ISSUED A CODE RED. WE IMMEDIATELY SET ABOUT TO
9 TRANSLATE THE JAPANESE DOCUMENTS. WE IMMEDIATELY SET OUT TO
10 DETERMINE WHETHER THEY HAD BEEN PRODUCED IN THE CASE, BECAUSE
11 REMEMBER, YOU'VE GOT AUTOLIV AND MAZDA. AND I THOUGHT, WELL,
12 IF MAZDA PRODUCED THEM, THEY ALREADY HAVE THEM.

13 WE ALSO CONNECTED WITH COUNSEL IN THE STEGALL CASE
14 AND SAID, LOOK, IF YOU ALL HAVE PRODUCED DOCUMENTS IN THAT CASE
15 THAT ARE DIFFERENT FROM OURS, WE NEED TO GET THEM TO
16 PLAINTIFF'S COUNSEL IMMEDIATELY. AND WE WORKED VERY HARD OVER
17 THE NEXT THREE WEEKS AND ON NOVEMBER 2 WE PRODUCED SEVEN
18 DOCUMENTS THAT WERE AMONG WHAT DAVE GAVE ME ORIGINALLY TO THEM.
19 AND WE SAID, LOOK, WE ARE ALSO GOING TO GIVE YOU EVERYTHING IN
20 STEGALL THAT HASN'T BEEN PRODUCED WITHOUT REGARD TO
21 RESPONSIVENESS. I MEAN I JUST DIDN'T WANT TO GO THROUGH IT. I
22 DIDN'T WANT TO SPEND THE TIME TO FIGURE IT. I'M GOING TO GET
23 IT TO YOU. AND WE NEED TO GET THEM TRANSLATED. AND THEN WE
24 PAID FOR THE CERTIFIED TRANSLATIONS AND GAVE THEM TO THEM ON
25 NOVEMBER 21.

1 BETWEEN NOVEMBER TWENTY -- I'M SORRY. BETWEEN
2 NOVEMBER 2 AND NOVEMBER 28 THERE WERE A SERIES OF LETTERS
3 EXCHANGED. YOU'VE SEEN THOSE.

4 THE COURT: I SAW THEM.

5 MR. SCRIBNER: PLAINTIFF'S COUNSEL UNDERSTANDABLY
6 FRUSTRATED THAT DOCUMENTS WERE PRODUCED AT THIS TIME. I WAS
7 FRUSTRATED.

8 THEY ASKED US TO PROVIDE ADDITIONAL DETAILS ABOUT THE
9 DOCUMENTS. THEY ASKED US ABOUT SPECIFIC DOCUMENTS OR WHAT THEY
10 THOUGHT WERE DOCUMENTS. CAN YOU GO BACK AND CHECK AND SEE, YOU
11 KNOW, ARE THERE THESE DOCUMENTS? NOW, MIND YOU, THIS PROGRAM
12 TOOK PLACE IN 2001, 2002. THESE ARE OLD DOCUMENTS AND THEY ARE
13 NOT -- MOST OF THEM, THE VAST MAJORITY OF THEM ARE NOT
14 ELECTRONIC DOCUMENTS. THEY ARE HARD COPY DOCUMENTS THAT PEOPLE
15 ARE FINDING FROM FILES.

16 ULTIMATELY, AFTER COMMUNICATING WITH AUTOLIV JAPAN,
17 THEY CONFIRMED THAT ALL DOCUMENTS RELATED TO THE J48C, WHICH IS
18 THE DRIVER'S SIDE SEATBELT FOR THE 2005 MAZDA3, AND THE J48L
19 PROGRAM, WHICH IS THE DRIVER'S SIDE SEATBELT FOR THE 2006
20 MAZDA3, HAD BEEN PRODUCED SINCE THEY WERE ASKED ABOUT THEM
21 EARLY ON IN THE CASE.

22 SO I THINK PLAINTIFF WAS APPROPRIATE IN ASKING US TO
23 GO BACK AND MAKE SURE THAT WITH SPECIFIC LISTS IN MIND, DO YOU
24 HAVE ANY MORE OF THESE DOCUMENTS? AND WE CONFIRMED THAT THERE
25 WERE NOT.

1 THE COURT: MR. SCRIBNER, LET ASK YOU A QUESTION.

2 MR. SCRIBNER: SURE.

3 THE COURT: AND THIS QUESTION MAY NOT BE FAIR TO YOU,
4 BUT YOU ARE THE ONLY PERSON I CAN ASK.

5 HOW COULD THEY MISS THESE DOCUMENTS?

6 MR. SCRIBNER: WELL, THAT'S A GREAT QUESTION. AND SO
7 LET ME START WITH THE S.O.W. THAT'S PROBABLY -- WE HAVE A LOT
8 OF THINGS TO SAY ABOUT THE S.O.W., BUT TO DIRECTLY ANSWER YOUR
9 QUESTION, SO THE INDIVIDUAL WHO HAD THE S.O.W. IS AN INDIVIDUAL
10 WHO NO LONGER IS EMPLOYED BY AUTOLIV, MR. HIRABAYASHI. HE WAS
11 AN EXECUTIVE LEVEL MANAGEMENT PERSON. IT WAS ON HIS COMPUTER
12 BUT IT IS IN A PDF FORM. IN OTHER WORDS, IT'S ON HIS HARD
13 DRIVE. IT'S NOT SEARCHABLE. YOU ARE NOT GOING TO FIND IT
14 THROUGH A SEARCH, THAT SORT OF THING.

15 HE WAS AND HIS TEAM WERE ASKED TO PRODUCE S.O.W.'S.
16 DO YOU HAVE S.O.W.'S? AND WE DID. WE PRODUCED THREE S.O.W.'S
17 IN THIS CASE. HE DID NOT PRODUCE THE S.O.W. THAT WAS CREATED
18 BY MAZDA IN 1999, YOU KNOW, THAT WE PRODUCED LATE. SHOULD IT
19 HAVE BEEN PRODUCED? IF I HAD KNOWN ABOUT IT, IT WOULD HAVE
20 BEEN PRODUCED FOR SURE.

21 THE COURT: I DON'T DOUBT THAT.

22 MR. SCRIBNER: YOU KNOW, HOW DID HE MISS IT? HE IS
23 NO LONGER EMPLOYED BY AUTOLIV. I DO THINK THAT THERE IS A
24 COUPLE OF THINGS TO NOTE IN ADDITION TO THE AGE. YOU ARE
25 TALKING ABOUT A DOCUMENT THAT, ACCORDING TO ITS ELECTRONIC

1 PROPERTIES, WAS CREATED BY MAZDA IN 1999. IT WAS SOMETHING
2 THAT WAS ACCESSIBLE TO HIM.

3 I THINK THAT WHEN WE ASKED FOR S.O.W.'S, HE PROVIDED
4 THE S.O.W.'S RELATED TO THIS PROGRAM. THE S.O.W. ITSELF IS A
5 GENERIC DOCUMENT THAT MAZDA PROVIDES AT A CORPORATE LEVEL TO
6 ALL ITS FULL SERVICE SUPPLIERS. IT DOESN'T INCLUDE THE WORDS
7 SEATBELT, AUTOLIV, AIRBAG, J48L, J48C, NONE OF THOSE THINGS.

8 AND SO IT'S HARD FOR ME, BECAUSE HE IS A FORMER
9 EMPLOYEE AND, YOU KNOW, I DON'T KNOW WHAT HE WAS THINKING, IT'S
10 HARD FOR ME TO EXPLAIN WHY THIS DIDN'T MAKE ITS WAY INTO THE
11 OTHER THREE S.O.W.'S WE PRODUCED. BUT I SUSPECT HE THOUGHT,
12 WHAT DOES THIS HAVE TO DO WITH THE PROGRAM, RIGHT? WHAT HAS
13 THIS GOT TO DO WITH J48C OR J48L? I MEAN THAT'S CORPORATE
14 LEVEL. THEY WANT DOCUMENT -- THEY WANT THAT SPECIFICATION.
15 THEY WANT COMMUNICATIONS ABOUT SPECIFIC DESIGN. I'M GUESSING.
16 DON'T KNOW THE ANSWER TO THAT. BUT I DON'T THINK IT'S AS --
17 SHOULD IT HAVE BEEN PRODUCED? ABSOLUTELY. I DON'T THINK IT'S
18 AS EASY AS THIS IS A REAL CLEAR OBVIOUS ONE. IT CERTAINLY
19 WASN'T TO THEM AND I CAN SEE WHY IT WASN'T. THAT'S ALL I CAN
20 SAY.

21 THE COURT: WHAT MADE IT STAND OUT IN THE CALIFORNIA
22 CASE AS COMPARED TO THIS CASE?

23 MR. SCRIBNER: WELL, THAT'S ANOTHER VERY GOOD
24 QUESTION. WHAT WE HAD WAS A DIFFERENT INDIVIDUAL WHO WAS
25 LOCATING DOCUMENTS AND FOUND IT. AND HE SAID, WELL, HEY,

1 HERE'S AN S.O.W. DOES IT HAVE ANY MORE RELEVANCE TO THAT CASE
2 THAN OURS? NO. BUT IT'S LITERALLY THE DIFFERENCE BETWEEN
3 SOMEBODY LEFT THE EMPLOY OF AUTOLIV AND SOMEBODY ELSE GOING
4 THROUGH AND SAYING, "HEY, I FOUND AN S.O.W. HERE IT IS."

5 THE COURT: LET'S SAY I AM AGREEING WITH YOU IT'S NOT
6 INTENTIONAL. ISN'T THE EFFECT, THOUGH, STILL THE SAME ON THE
7 PLAINTIFF? IN READING JUDGE DUFFEY'S SUMMARY JUDGMENT ORDER,
8 THERE IS NO QUESTION IN MY MIND ACTIVELY INVOLVED IS THE REASON
9 WHY HE GRANTED YOU SUMMARY JUDGMENT AND DIDN'T AGREE WITH THE
10 PLAINTIFF.

11 MR. SCRIBNER: LET ME PUSH BACK, RESPECTFULLY.

12 THE COURT: OKAY.

13 MR. SCRIBNER: ON THAT NOTION.

14 ACTIVE INVOLVEMENT. THAT PHRASE COMES FROM THE
15 DAVENPORT CASE.

16 THE COURT: RIGHT.

17 MR. SCRIBNER: AND IN THE DAVENPORT CASE YOU HAD AN
18 ENGINE SUPPLIER WHO IS SUPPLYING TO A WOOD CHIPPER COMPANY.
19 KIND OF AKIN TO OUR SITUATION. SEATBELT, CAR, RIGHT? THE
20 ENGINE SUPPLIER SAID, LOOK, THIS IS GOING TO WORK WITH YOUR
21 WOOD CHIPPER AND HERE IS WHERE I WOULD LOCATE IT. AND
22 ULTIMATELY THE PLAINTIFF SAID YOU LOCATED IT IN THE WRONG SPOT.

23 EVEN UNDER THOSE FACTS THE COURT OF APPEALS OF
24 GEORGIA SAID THAT'S NOT ACTIVE INVOLVEMENT. YOU CAN MAKE
25 SUGGESTIONS. YOU CAN MAKE RECOMMENDATIONS. ACTIVE INVOLVEMENT

1 IS WHO IS ACTIVELY INVOLVED IN THAT DECISION. AND THE ULTIMATE
2 DECISION THERE, THEY SAID, JUDGE ELLINGTON, I BELIEVE, WAS MADE
3 BY THE OEM, THE WOOD CHIPPING COMPANY.

4 WHAT I THINK JUDGE DUFFEY DID -- AND LOOK, I AM
5 ENGAGING IN RANK SPECULATION. I HAVE NO IDEA WHAT JUDGE DUFFEY
6 WOULD HAVE DONE WITH ALL OF THIS, BUT I POINT YOUR HONOR TO
7 THREE THINGS THAT HE SAID IN HIS ORDER THAT I THINK --

8 THE COURT: LET ME ASK YOU ONE QUESTION --

9 MR. SCRIBNER: SURE, SURE.

10 THE COURT: -- BEFORE WE MOVE ON FROM THIS POINT.

11 JUDGE DUFFEY IS QUESTIONING MR. PRENTKOWSKI. AND
12 FORGIVE ME FOR MISPRONOUNCING HIS NAME.

13 MR. SCRIBNER: YOU GOT THAT RIGHT. PRENTKOWSKI.

14 THE COURT: "I SPECIFICALLY ASKED, 'DID MAZDA ASK
15 AUTOLIV JAPAN FOR ANY INPUT ON THE SYSTEM-LEVEL DESIGN
16 SPECIFICATION?' 'NOT ON THE SEAT'-- THE AUTOLIV JAPAN RESPONSE
17 WAS, 'NOT ON THE SEATBELT SYSTEMS.'"

18 EVEN IF YOU TAKE MAYBE A DIFFERENT INTERPRETATION OF
19 ACTIVELY INVOLVED, THIS IS PRETTY SPECIFIC.

20 MR. SCRIBNER: I BELIEVE THAT DAVE PRENTKOWSKI, WHO
21 IS GOING TO TESTIFY AT TRIAL IF YOU ALLOW IT, WOULD SAY EXACTLY
22 THE SAME THING TODAY. "SPECIFICATION" IS A TERM OF ART. A
23 SPECIFICATION IS A DOCUMENT THAT THE OEM PUTS TOGETHER AND
24 PROVIDES TO AUTOLIV AND SAYS GIVE ME THIS THING. WAS THERE
25 BACK AND FORTH? WERE THERE EMAIL COMMUNICATIONS? JUDGE DUFFEY

1 KNEW THAT.

2 THERE WERE LOTS OF COMMUNICATIONS THAT HE EVALUATES
3 AND SAYS THIS DOESN'T RISE TO THE LEVEL OF ACTIVE INVOLVEMENT.
4 YEAH, THEY WERE ASKING YOU QUESTIONS. YEAH, AUTOLIV, YOU WERE
5 DOING SLED TESTING. YEAH, THEY ASKED YOU ABOUT THE HEAD
6 BOTTOMING OUT. BUT I DON'T SEE ACTIVE INVOLVEMENT IN WHAT I
7 VIEW HIM SAYING CAN BE SUMMED UP IN THREE POINTS IN HIS COURT
8 ORDER ON PAGES 11 AND 12.

9 AND AGAIN, FORGIVE ME. THIS IS JUST GUESSWORK, BUT
10 THIS IS WHAT I TOOK HIM TO MEAN. SO STATEMENT NUMBER ONE FROM
11 JUDGE DUFFEY SAYS AS FOLLOWS: "THE ALLEGEDLY DEFECTIVE
12 COMPONENT IN THIS CASE IS THE SEATBELT ASSEMBLY. WITH RESPECT
13 TO THIS COMPONENT, THE EVIDENCE SHOWS THAT AUTOLIV SUPPLIED A
14 SEATBELT ASSEMBLY THAT MET MAZDA'S DETAILED SPECIFICATIONS."
15 THAT STATEMENT REMAINS TRUE TODAY.

16 STATEMENT NUMBER TWO: "AUTOLIV PROVIDED MAZDA WITH
17 SEVERAL SAMPLES OF SEATBELT COMPONENTS THAT INCLUDED TORSION
18 BARS OF DIFFERENT DEPLOYMENT THRESHOLDS AND MAZDA PERFORMED
19 TESTING AND ULTIMATELY DECIDED TO UTILIZE A LOAD LIMITING
20 RETRACTOR WITH A TORSION BAR WITH A DEPLOYMENT THRESHOLD OF TWO
21 PLUS OR MINUS .5 KILONEWTON." THAT STATEMENT ALSO REMAINS
22 TRUE.

23 STATEMENT THREE. AND THIS REALLY GETS RIGHT TO IT.
24 "PUT ANOTHER WAY, AS MAZDA'S EXPERT TESTIFIED, MAZDA WORKED
25 TOGETHER WITH AUTOLIV TO ENSURE THE APPROPRIATENESS OF THE

1 SEATBELT DESIGN FOR THE VEHICLE AND THEN MAZDA ULTIMATELY
2 DECIDED THAT IT MET THEIR SPECIFICATIONS FOR INCORPORATION INTO
3 THE VEHICLE." THAT STATEMENT ALSO REMAINS TRUE.

4 HE WAS VERY COGNIZANT OF THE FACT THAT, AS HE SAYS
5 RIGHT HERE, AUTOLIV TO ENSURE THE APPROPRIATENESS OF THE
6 SEATBELT DESIGN. THEY HAD COMMUNICATIONS WITH MAZDA ABOUT THE
7 SEATBELT DESIGN, THE ACTUAL COMPONENTS THAT WE MADE AVAILABLE
8 FOR THEM TO SELECT FROM.

9 I THINK WHAT I WOULD SAY IN SUMMARY ON THE S.O.W.,
10 YOUR HONOR, AND THIS -- I DON'T KNOW HOW TO EXPLAIN THIS,
11 REALLY, BUT I AM GOING TO DO MY BEST.

12 IN A CONTRACT CASE IF YOU AND I HAD A CONTRACT AND WE
13 HAD AN INTERPRETATION ISSUE AND THE COURT SAID IT'S NOT CRYSTAL
14 CLEAR, THEN THEY ARE GOING TO TAKE TESTIMONY FROM YOU AND THEY
15 ARE GOING TO TAKE TESTIMONY FROM ME. AND IF WE ACTUALLY
16 AGREED, REALLY IT WOULDN'T MATTER WHAT THE CONTRACT SAID. THAT
17 WOULD BE THE INTENT OF THE PARTIES.

18 WHAT IS A LITTLE UNIQUE HERE IS THAT I THINK JUDGE
19 DUFFEY SAW THAT MAZDA AND AUTOLIV AGREED AS TO HOW THE PROGRAM
20 WAS GOING TO WORK, THAT WE WOULD PROVIDE THEM SUPPORT, THAT WE
21 DID HAVE COMMUNICATIONS, THAT WE DID HAVE INVOLVEMENT. WHEN I
22 SAY IN MY FOOTNOTE THAT WE HAD -- NO ONE DISPUTES THAT WE HAD
23 INVOLVEMENT. WE DIDN'T HAVE ACTIVE INVOLVEMENT THE WAY THE
24 DAVENPORT CASE DECIDES. THAT IS WHAT IS AT THE HEART OF WHAT
25 WE WERE ARGUING TO JUDGE DUFFEY AND I WOULD MAKE THAT SAME

1 ARGUMENT TODAY ON SUMMARY JUDGMENT BUT FOR JUDGE WILSON'S
2 RULING.

3 BUT TO ROUND THAT OUT, SO AFTER THIS THESE DOCUMENTS
4 WERE PRODUCED. THAT WAS ON NOVEMBER 21. ON DECEMBER 20, A
5 MONTH LATER, WE PUT UP AT OUR EXPENSE, FLEW HIM OVER TO LOS
6 ANGELES, MR. KAMEI. HE IS THE LEAD SYSTEM ENGINEER. HE IS
7 BOOTS ON THE GROUND. THE GUY THAT HAD THE DOCUMENT, HE WAS
8 SORT OF MANAGERIAL UP HERE. BUT THE GUY THAT WAS WORKING WITH
9 MAZDA IS MR. KAMEI. HE IS THE GUY THAT HAS BOOTS ON THE GROUND
10 INTERACTION.

11 THEY DEPOSED HIM. THEY HAD THESE DOCUMENTS FOR A
12 MONTH. AND HERE IS THE BACK AND FORTH ON THE S.O.W.

13 QUESTION: DID YOU FIND THE STATEMENT OF WORK?

14 ANSWER: I DID NOT FIND IT BUT PERHAPS SOMEBODY ELSE
15 FOUND IT.

16 QUESTION: WHO FOUND IT?

17 ANSWER: I DON'T KNOW.

18 QUESTION: WHY DID YOU SEE -- WHEN DID YOU FIRST SEE
19 THE STATEMENT OF WORK?

20 ANSWER: I THINK I PROBABLY SAW THE COVER SHEET FOR
21 THE MAZDA S.O.W. WHEN DOING DEVELOPMENT, BUT I HAVE NOT LOOKED
22 AT THE CONTENT IN DETAIL.

23 MR. BUTLER: WHAT PAGE AND LINE ARE YOU ON, SIR?

24 MR. SCRIBNER: 27 AND 28.

25 MR. BUTLER: WHAT?

1 MR. SCRIBNER: 27 AND 28.

2 MR. BUTLER: 27 AND 28 WHAT? THE PAGE?

3 MR. SCRIBNER: YES, SIR.

4 MR. BUTLER: WHAT LINE?

5 MR. SCRIBNER: 27 LINE 12 THROUGH 28 LINE THREE.

6 THAT WAS THE LAST QUESTION THEY ASKED MR. KAMEI ABOUT
7 THE S.O.W. THEY NEVER ASKED MR. KAMEI A SINGLE QUESTION ABOUT
8 THE S.O.W. OTHER THAN THAT. THEY NEVER ASKED MR. KAMEI ANY
9 QUESTIONS ABOUT THESE VA/VE DOCUMENTS. YOU KNOW WHY? BECAUSE
10 MR. KAMEI WOULD SAY WE DIDN'T MAKE THAT DECISION. THE DECISION
11 ON THE RETRACTOR AND THE THRESHOLD WAS CLEARLY MADE BY MAZDA.
12 I PROVIDED THEM WITH OPTIONS AND THEY CHOSE WHAT THEY CHOSE.
13 INSTEAD OF GOING WITH WHAT MAZDA SUBMITTED A DECLARATION ON
14 THAT JUDGE DUFFEY CONSIDERED THAT SAID WE AND WE ALONE MAKE ALL
15 DECISIONS REGARDING OCCUPANT SAFETY FOR THE MAZDA3, AUTOLIV'S
16 TESTIMONY SAYS MAZDA IS RIGHT. THEY MAKE THOSE DECISIONS. WE
17 SUPPORT BUT THEY MAKE THOSE DECISIONS.

18 JUDGE DUFFEY GRANTS SUMMARY JUDGMENT AND SAYS THERE
19 IS NO ACTIVE INVOLVEMENT. AND WHAT WE ARE HEARING TODAY IS
20 THESE DOCUMENTS SOMEHOW UPSET THE APPLE CART BECAUSE THEIR
21 EXPERT SAYS SO. YOU HAVE AUTOLIV AND MAZDA -- GOING BACK TO
22 THE CONTRACT SITUATION, IT'S LIKE AN EXPERT COMING IN SAYING I
23 DON'T CARE, I DON'T CARE WHAT JUDGE JONES AND DOUG SCRIBNER
24 MEANT IN THAT DOCUMENT. I VIEW IT DIFFERENTLY.

25 THAT'S WHAT WE HAVE. WE HAVE AN EXPERT WHO IS A

1 HUMAN HIGHLIGHTER, WHICH I THINK IS INAPPROPRIATE AND IT'S
2 SUBJECT TO A DAUBERT MOTION, BUT YOU'LL HEAR ALL OF THAT. FOR
3 SOMEBODY TO COME IN AND SAY I AM A MASTER OF ALL, HE HAS NEVER
4 WORKED IN THE AUTO INDUSTRY. HE HAS NEVER DESIGNED A SEATBELT
5 IN HIS ENTIRE GOD-GIVEN LIFE. AND HE IS GOING TO COME IN AND
6 TELL US HERE IS WHAT THESE DOCUMENTS MEAN. I AM GOING TO
7 INTERPRET THEM DESPITE THE FACT THAT MAZDA AND AUTOLIV DIDN'T
8 INTERPRET IT THAT WAY AT ALL.

9 THE DOCUMENTS SHOULD HAVE BEEN PRODUCED. I AM
10 MORTIFIED THAT THEY WERE PRODUCED LATE. ARE THESE
11 GAME-CHANGING DOCUMENTS? IN OUR VIEW, NO. WOULD I HAVE MADE
12 THE EXACT SAME ARGUMENT TO JUDGE DUFFEY THAT I AM MAKING THAT
13 MADE BACK THEN? YES. WHAT WOULD HE HAVE DONE WITH IT? I
14 DON'T KNOW. I DON'T KNOW. BUT THE ARGUMENT IS THE SAME.

15 THE COURT: SO THESE DOCUMENTS CHANGED NOTHING?

16 MR. SCRIBNER: IN MY VIEW, CORRECT. SHOULD HAVE BEEN
17 PRODUCED. SHOULD HAVE BEEN PRODUCED.

18 SO IF YOU LOOK AT THE CASE LAW, THREE ESSENTIAL
19 ELEMENTS ARE NEEDED FOR A DEFAULT JUDGMENT. AND IN ADDITION TO
20 NOTING THAT IT'S A RESULT OF LAST RESORT, THE PLAINTIFF HAS TO
21 SHOW THREE THINGS, OR THE MOVING PARTY, RATHER.

22 THEY NEED TO SHOW, NUMBER ONE, AND I'M QUOTING, "THAT
23 THE NONMOVING PARTY EXHIBITED A WILLFUL OR BAD FAITH FAILURE TO
24 OBEY A DISCOVERY ORDER; TWO, THAT THE MOVING PARTY WAS
25 PREJUDICED BY THAT VIOLATION; AND THREE, THAT A LESSER SANCTION

1 WOULD FAIL TO PUNISH THE VIOLATION ADEQUATELY AND WOULD NOT
2 ENSURE FUTURE COMPLIANCE WITH COURT ORDERS."

3 I SUBMIT TO YOU THAT THE FACT THAT THESE DOCUMENTS
4 LANDED ON MY EMAIL WITHIN TEN HOURS OF OUR 30(B)(6)
5 REPRESENTATIVE LEARNING ABOUT THEM FROM THE FOLKS IN JAPAN IS
6 NOT BAD FAITH. IT'S A MISTAKE. IT'S GOOD FAITH. IT'S -- YOU
7 KNOW, WE SHOULD HAVE PRODUCED THESE DOCUMENTS, BUT NOW THAT WE
8 GOT THEM THEY WEREN'T DEEP SIXED. THEY WERE PRODUCED TO THE
9 PLAINTIFFS IMMEDIATELY.

10 MR. BUTLER: YOUR HONOR, WE OBJECT. THERE IS A
11 DIFFERENCE. HE KEEPS USING THE WORD "WE." AND WE'VE MADE IT
12 VERY CLEAR. WE ARE NOT -- THIS IS NOT A MOTION FOR SANCTIONS
13 AGAINST MR. SCRIBNER. IT'S A MOTION FOR SANCTIONS AGAINST
14 AUTOLIV. AUTOLIV ALWAYS HAD THESE DOCUMENTS. AND MS. CANNELLA
15 HAS TOLD YOU WHERE THEY WERE, ON THE COMPUTER OF THE FIRST GUY
16 AUTOLIV SHOULD HAVE GONE TO TO LOOK FOR THEM.

17 AUTOLIV KNEW WHAT MR. SCRIBNER PUT IN THIS BRIEF TO
18 JUDGE DUFFEY AND THE ELEVENTH CIRCUIT WHEN HE ARGUED TO THEM.
19 AUTOLIV MONITORS THIS CASE. AUTOLIV HAD JUDGE DUFFEY'S ORDER.
20 AUTOLIV KNEW THAT WHAT MS. CANNELLA WENT OVER WITH YOU FROM
21 JUDGE DUFFEY'S ORDER WAS NOT TRUE BASED ON DOCUMENTS THAT
22 AUTOLIV HAD.

23 THIS MOTION IS ABOUT AUTOLIV, NOT ABOUT WHAT
24 PRENTKOWSKI DID IN OCTOBER OF 2018, NOT ABOUT WHAT MR. SCRIBNER
25 DID IN OCTOBER OF 2018. AUTOLIV ALWAYS HAD THESE DOCUMENTS.

1 AUTOLIV HAS ALWAYS HAD THE TRUTH.

2 THE COURT: THANK YOU.

3 MR. SCRIBNER?

4 MR. SCRIBNER: THEN WHY PRODUCE THEM? WHAT IS THE
5 POINT?

6 MR. BUTLER: BECAUSE THEY SLIPPED UP IN STEGALL AND
7 GOT OUT AND THE FIRST THING --

8 THE COURT: MR. BUTLER, MR. BUTLER.

9 MR. BUTLER: I'LL HUSH.

10 THE COURT: THANK YOU.

11 MR. SCRIBNER: THEY PRODUCED THEM. THEY LEARNED
12 IMMEDIATELY AFTER WE TRANSLATED THEM THAT THEY HADN'T BEEN
13 PRODUCED BEFORE AND THEY WERE PRODUCED.

14 IF YOU LOOK AT THE CASE LAW, JUDGE BATTEN, IN THE
15 AMERICAN SUPPLIES CASE, LOOK AT THAT CASE. HE SAYS, I HAVE
16 FOUND A PATTERN OF MISCONDUCT, A PATTERN OF BAD FAITH CONDUCT.
17 AND HE SAYS, I'M REALLY UNHAPPY AND I'M GOING TO AWARD FEES. I
18 AM NOT GOING TO ISSUE A DEFAULT JUDGMENT.

19 THE KIPPERMAN CASE, JUDGE FORRESTER. LISTEN TO THIS
20 ONE. AGAIN, THIS GIVES YOU A SENSE FOR WHAT JUDGES, YOU KNOW,
21 YOUR CONTEMPORARIES ARE DOING WITH ISSUES WHEN SOMEBODY MAKES A
22 MOTION LIKE THIS.

23 JUDGE FORRESTER ASKED A LAWYER AT A HEARING, QUOTE,
24 SINCE THIS IS THE HEART OF THE CASE, YOU UNDERSTAND THAT IF I
25 LATER FIND THAT THERE ARE DOCUMENTS, AND UNLESS IT'S PRETTY

1 CLEAR AND COMPELLING THAT THEY WEREN'T JUST SIMPLY OVERLOOKED,
2 THAT IN THIS COURT'S MIND WOULD BE GROUNDS TO STRIKE YOUR
3 ANSWER.

4 GUESS WHAT? MONTHS LATER THOSE VERY DOCUMENTS WERE
5 PRODUCED. WHAT DOES THE COURT DO? THE COURT SAYS DEFENDANTS
6 BLATANTLY IGNORED ORDERS OF THE COURT AND PROMPTED MULTIPLE
7 MOTIONS TO COMPEL. GIVEN THAT BEHAVIOR, WE ARE TEMPTED TO
8 GRANT THE REQUEST. THAT SAID, WE ARE NOT GOING TO STRIKE THE
9 ANSWER. IT'S PREFERABLE TO HEAR THESE CASES ON THE MERITS. WE
10 ARE GOING TO AWARD FEES.

11 IN THE ONLY CASE CITED BY EITHER PARTY WHERE A
12 DEFAULT JUDGMENT WAS ENTERED, THE SUZUKI CASE, THE COURT HELD,
13 AND I QUOTE: THE DEFENDANT DELIBERATELY WITHHELD INFORMATION
14 FROM THE PLAINTIFF AND THE COMPANY'S COUNSEL PARTICIPATED IN A
15 COVER-UP.

16 NOW, I WANT TO JUXTAPOSE THAT AGAINST WHAT HAPPENED
17 HERE. IN AUGUST 26, ON AUGUST 26, 2015, WE HAD A HEARING
18 BEFORE MAGISTRATE JUDGE ANAND. THE FOCUS OF THAT MOTION TO
19 COMPEL WAS NOT THE S.O.W. OR ANY OF THAT STUFF. IT WAS
20 SUBSTANTIAL SIMILARITY, WHICH YOU GET IN ALL PRODUCTS CASES.
21 THEY SAID, HEY, WE KNOW THAT WE ARE GETTING INFORMATION FOR THE
22 2005 MAZDA3. WHAT ABOUT SUBSTANTIALLY SIMILAR VEHICLES? AND
23 IT WAS 85 PERCENT DIRECTED AT MAZDA, OKAY?

24 ULTIMATELY, THE COURT ORDER IS ISSUED AND IT SAYS:
25 HERE IS WHAT SUBSTANTIAL SIMILARITY MEANS FOR YOU, MAZDA, AND

1 FOR AUTOLIV, WHAT SUBSTANTIALLY SIMILAR MEANS, WE WANT YOU TO
2 PRODUCE THE SPECIFICATION FOR THAT VOLVO. AND WE DID IT.

3 I AM NOT SUGGESTING THAT AT THAT HEARING WE DIDN'T
4 TALK ABOUT THE 2005 MAZDA3 AND I AM NOT SUGGESTING THAT I
5 CERTAINLY WAS OF THE OPINION THAT THESE TYPES OF DOCUMENTS THAT
6 WE PRODUCED LATE SHOULD BE PRODUCED. AND SO I AM NOT
7 SUGGESTING THAT, YOU KNOW, AUTOLIV SHOULDN'T HAVE PRODUCED
8 THESE DOCUMENTS. I AM SUGGESTING THAT IN THESE OTHER CASES
9 THERE ARE REPEATED ORDERS AND MOTIONS TO COMPEL ABOUT A
10 SPECIFIC SET OF DOCUMENTS AND EVEN THEN THEY ARE NOT STRIKING
11 THE ANSWER.

12 HERE WE ARE TALKING ABOUT STATEMENTS MADE AT A
13 HEARING RELATED TO MAZDA WHERE THE COURT ORDERS US TO PRODUCE
14 DOCUMENTS TO VOLVO OR RELATED TO VOLVO AND WE DID IT. WE DID
15 IT.

16 THIS WAS OVERSIGHT. THIS WAS A MISTAKE. THERE IS NO
17 DOUBT IT'S A MISTAKE. IF YOU ARE GOING TO HOLD BACK DOCUMENTS,
18 WHY IN THE WORLD WOULD YOU HOLD BACK A DOCUMENT THAT MAZDA
19 CREATED FROM 1999 THAT TALKS ABOUT, YOU KNOW, THE S.O.W. FROM
20 1999?

21 MAZDA, BY THE WAY, DID NOT PRODUCE THAT DOCUMENT IN
22 THIS CASE EITHER. NOW, DOES THAT MEAN THEY DIDN'T HAVE IT
23 ANYMORE? MAYBE. DID THEY VIEW IT AS, WHAT IS THIS? THIS IS
24 OF NO MOMENT. I DON'T KNOW. BUT THEY DIDN'T PRODUCE IT EITHER
25 AND IT'S THEIR DOCUMENT.

1 IN TERMS OF PREJUDICE --

2 THE COURT: THEY ARGUE THEY COULDN'T ARGUE THIS IN
3 FRONT OF JUDGE DUFFEY, THEY COULDN'T ARGUE THIS TO THE ELEVENTH
4 CIRCUIT. THEY ARGUE THAT MS. ANDREWS FOR LACK OF A BETTER WORD
5 WAS PUT TO A LOT OF STRESS OVER HAVING TO WORRY ABOUT PAYING
6 ATTORNEY'S FEES AND THAT SHOULD BE PUNISHABLE BY MORE THAN A
7 FINE.

8 MR. SCRIBNER: I UNDERSTAND THEIR ARGUMENT. THEY
9 HAVE ASKED FOR A DEFAULT JUDGMENT, WHICH DOES NOT FEEL
10 APPROPRIATE HERE AND I DON'T THINK THAT THEY HAVE SATISFIED THE
11 ELEMENTS TO IT HERE.

12 THE SECOND THING I WOULD SAY. YOU ASKED, YOUR HONOR,
13 ABOUT, YOU KNOW, WHAT ARE THEY SAYING? WHAT IS AUTOLIV'S
14 DEFENSE? YOU KNOW, TO PREVENT US FROM ARGUING THAT THIS
15 TRAGEDY WAS IN PART MR. ANDREWS' FAULT FOR HAVING A SINGLE
16 VEHICLE ACCIDENT AND IN PART MAZDA'S FAULT BECAUSE OF THE
17 TESTIMONY FROM THEIR AIRBAG EXPERT IS SORT OF A DEATH KNELL TO
18 THE CASE.

19 I DON'T CONCEDE THAT THE PRODUCT IS DEFECTIVE. I
20 MEAN, YOU KNOW, WHAT I AM HEARING IS, WELL, WAIT A MINUTE. YOU
21 KNOW, HE KNOWS HE DOESN'T HAVE A DEFENSE. HE'S, YOU KNOW,
22 CONCEDING THAT THE PRODUCT IS DEFECTIVE. I WANT TO BE VERY
23 CLEAR THAT THAT IS NOT TRUE.

24 MY POINT I THINK IS THAT IF YOU STRIKE OUR ABILITY TO
25 ALLOCATE FAULT OR ASK YOU, AS FACT FINDER, TO ALLOCATE FAULT,

1 WE WILL BE DEFENDING A MAZDA DESIGN FOR A SEATBELT ASSEMBLY
2 THAT IS NOT OURS. IT'S MAZDA'S DECISION. WE PROVIDED THEM
3 WITH THE OPTIONS AND MAZDA CHOSE WHAT THEY CHOSE AND I HAVE TO
4 DEFEND MAZDA'S DECISION TO GO WITH THE RETRACTOR LEVEL AND THE
5 THRESHOLD LEVEL THAT THEY WENT WITH. THAT SEEMS PATENTLY
6 UNFAIR GIVEN THAT, YOU KNOW, THESE CASES ALL SEEM TO STAND FOR
7 THE SAME PROPOSITION: WE WANT CASES TO BE HEARD ON THE MERITS.

8 WE EXPECT FULLY THAT YOU ARE GOING TO ISSUE A RULING
9 AND AUTOLIV KNOWS THAT THESE DOCUMENTS SHOULD HAVE BEEN
10 PRODUCED AND WE ARE ACCEPTING, WE ARE GOING TO ACCEPT OUR FATE.
11 BUT AFTER WE ACCEPT THAT FATE MY HOPE AND EXPECTATION IS TO TRY
12 THIS CASE IN FRONT OF YOU AND LET US MAKE OUR ARGUMENTS,
13 BECAUSE WE HAVE ARGUMENTS. WE HAVE GOOD ARGUMENTS. WE HAVE A
14 GOOD CASE. AND THEN THE CHIPS WILL FALL AND YOU AS THE FACT
15 FINDER WILL MAKE THE DECISION YOU MAKE.

16 I WANT TO TOUCH ON JUST A COUPLE OF DOCUMENTS IN
17 ADDITION TO THE S.O.W. YOU KNOW -- WELL, LET ME FINISH WITH
18 THE S.O.W. I GOT A LITTLE SIDETRACKED THERE.

19 IT'S CREATED BY MAZDA IN 1999. DOESN'T INCLUDE ANY
20 OF THE WORDS THAT YOU WOULD TYPICALLY -- YOU KNOW, AIRBAG,
21 SEATBELT, J48C, THE KIND OF THINGS THAT I SUSPECT PEOPLE WERE
22 LOOKING FOR, THE KIND OF SEARCHES THAT WE RAN. IT'S NOT
23 PROGRAM SPECIFIC. THAT DOESN'T MEAN IT'S NOT IMPORTANT. THEY
24 HAVE PLACED IMPORTANCE ON IT. I'M NOT GOING TO ARGUE THAT. I
25 DON'T THINK IT'S IMPORTANT, BUT IT'S NOT PROGRAM SPECIFIC. IT

1 DOESN'T TALK ABOUT WHO MADE THIS DECISION WITH RESPECT TO THE
2 LOAD LIMITER.

3 MR. KAMEI SUBMITTED A DECLARATION, BECAUSE HE WASN'T
4 ASKED ANY QUESTIONS ABOUT THIS AT HIS DEPOSITION. SO WE
5 SUBMITTED A DECLARATION. AND HE SAID, LOOK, I DIDN'T RELY ON
6 THIS THING. I DIDN'T REVIEW THIS THING. I WENT ABOUT MY
7 BUSINESS LIKE I TYPICALLY DO.

8 AND THIS NOTION THAT THE S.O.W. SAYS, HEY, IF YOU
9 FIND A PROBLEM, YOU'VE GOT TO, YOU KNOW, HELP FIX IT, WELL, THE
10 PROBLEM IS WHAT? THIS GOT FOUR OUT OF FIVE STARS. I SUSPECT
11 THAT WHEN AUTOLIV HEARD THE RESULTS ABOUT THE MAZDA VEHICLE AND
12 CRASH TESTING, THEY SAID, WHOOPEE, YOO-HOO. FOUR OUT OF FIVE
13 STARS. GREAT.

14 I ALSO SUSPECT THAT IF ANY ENGINEER WANTED TO REDUCE
15 THE AMOUNT OF PAY-OUT, THEY WOULD INCREASE THE LOAD LIMITER AND
16 WE GAVE THEM THE OPTIONS. SO TO THE EXTENT YOU ARE SUPPOSED TO
17 PROVIDE A SOLUTION, WHICH IS WHAT I THINK MS. CANNELLA SAID WE
18 WERE SUPPOSED TO DO, WE DID. WE DID PROVIDE THEM A SOLUTION.
19 BUT THEY GET TO MAKE THE CHOICE AND THEY SHOULD MAKE THE
20 CHOICE.

21 I THINK THE VA/VE DOCUMENTS HAVE NOT BEEN PORTRAYED
22 THE WAY WE WOULD PORTRAY THEM AND I WILL LEAVE IT AT THAT.
23 THESE DOCUMENTS, ACCORDING TO PLAINTIFFS, SAY, YOU KNOW, WE ARE
24 ACTIVELY INVOLVED IN THE DESIGN OF THE 2005 MAZDA3. IF YOU
25 LOOK AT THE DATES ON THE THREE VA/VE'S, ONE OF WHICH IS

1 CHANGING A SPONG COVER TO A PLASTIC COVER -- I THINK YOU ASKED,
2 WELL, WHAT HAS THIS GOT TO DO WITH ANYTHING? IN ANY EVENT, ALL
3 THREE OF THE VA/VE'S ARE DATED IN A TIME FRAME THAT MEANS IT'S
4 ALREADY PAST THE TIME THAT THE 2005 MAZDA3 IS BEING
5 MANUFACTURED.

6 SO I DON'T WANT THAT LOST ON THE COURT, THAT THE
7 VA/VE IMPORTANCE THAT THEY PLACE ON IT HAS NOTHING TO DO WITH
8 OUR VEHICLE. IT'S NOT THE 2005. THESE OCCUR IN EARLY 2005.
9 THE 2005 HAS ALREADY BEEN -- BEING MANUFACTURED FOR MONTHS AND
10 MONTHS.

11 AGAIN, SMOKING GUN DOCUMENTS? WE CERTAINLY DON'T
12 VIEW THEM THAT WAY. YOU SAW THE MAZDA TEAM BUSINESS UPDATES
13 THAT WERE USED WITH THEIR EXPERT. I THINK IT'S ABSOLUTELY ONE
14 HUNDRED PERCENT CLEAR THAT MAZDA WAS MAKING DECISIONS ABOUT
15 WHAT TO USE AND WE WERE WAITING FOR THEIR DECISION. OVER AND
16 OVER YOU SEE IN THESE NOTES WAITING FOR MAZDA. THEY'LL TELL US
17 WHAT THEY WANT.

18 THE PRODUCT SHEET THAT MS. CANNELLA WENT BACK TO. I
19 THOUGHT WE COVERED THAT BUT I WANT TO MAKE SURE THAT THE COURT
20 UNDERSTANDS WHAT OUR POINT IS.

21 MR. MEYER DOESN'T CRITICIZE ANY PART OF THE SEATBELT
22 EXCEPT THE THRESHOLD AND THE LACK OF A STOP, RIGHT? SO THERE
23 IS A PRODUCT SHEET. IT DOES DATE BACK PRE WHEN THIS VEHICLE
24 WAS SOLD, BUT IT HAS OPTIONS. IT SAYS, DO YOU WANT THE TWO?
25 DO YOU WANT THE THREE? DO YOU WANT THE FOUR PLUS OR MINUS

1 POINT FIVE?

2 TO SAY THAT WE DESIGNED THIS PARTICULAR SEATBELT
3 BASED UPON THAT DOCUMENT IS JUST FLAT WRONG, BECAUSE THEY ARE
4 SAYING THE FLAW IS THE THRESHOLD. AND THE PRODUCT SHEET ITSELF
5 SAYS IF YOU WANT A TWO, WE'LL GIVE IT TO YOU. IF YOU WANT A
6 THREE, WE'LL GIVE IT TO YOU. IF YOU WANT A FOUR, WE'LL GIVE IT
7 TO YOU.

8 I HEAR WHAT HE IS SAYING. HE SAYS TWO IS TOO LOW
9 JUST IN A VACUUM, PERIOD. WE'LL DEFEND AGAINST THAT. I'LL
10 HAVE MY MOMENT, IF THE COURT ALLOWS IT, WHERE OUR EXPERT WILL
11 TELL YOU THAT THAT'S NOT HOW WE VIEW THE WORLD AT ALL. BUT TO
12 SUGGEST THAT WE DESIGNED IT AND HAD THIS DESIGN FOR A LONG TIME
13 BEFORE 2005 ROLLED AROUND, THAT'S JUST NOT RIGHT. I MEAN WE
14 HAD A PRODUCT SHEET THAT GAVE THEM THE OPTIONS. THAT'S THE WAY
15 IT WORKS IN THIS INDUSTRY.

16 IN CONCLUSION, A DEFAULT JUDGMENT IS A VERY, VERY
17 DRACONIAN RESULT. AND I UNDERSTAND THE PLAINTIFF'S
18 FRUSTRATION. I CAN TELL YOU THAT THE PEOPLE THAT I WORK WITH
19 IN THAT COMPANY AND THE LEGAL TEAM THAT YOU HAVE BEFORE YOU
20 TODAY KNOWS JUST HOW GRAVE THE SITUATION WAS AND IS.

21 WE WILL LIVE WITH WHATEVER RULING YOU GIVE US. WE
22 WOULD RESPECTFULLY REQUEST THE OPPORTUNITY TO TRY THE CASE ON
23 THE MERITS, ULTIMATELY, TO TRY THE CASE ON THE MERITS WITHOUT
24 HAMPERING OUR ABILITY TO MAKE SURE THAT YOU UNDERSTAND ALL OF
25 THE FACTS AND THAT ULTIMATELY YOU CONCLUDE WHO, IF ANYONE, IS

1 RESPONSIBLE FOR THIS TRAGEDY. THAT'S WHAT WE WOULD ASK FOR.
2 WE THINK IT'S IN KEEPING WITH THE CASE LAW THAT WE HAVE CITED
3 WHERE, YOU KNOW, WHAT I WOULD CONSIDER VERY EGREGIOUS BEHAVIOR
4 RESULTED IN ATTORNEY'S FEES. I'M SURE THEIR LAWYERS ON THE
5 OTHER SIDE WERE UNHAPPY TOO. BUT ULTIMATELY, I THINK IT WOULD
6 BE A STEP TOO FAR TO TAKE AWAY OUR RIGHTS TO TRY THE CASE ON
7 THE MERITS.

8 THE COURT: THANK YOU, MR. SCRIBNER.

9 MR. SCRIBNER: THANK YOU.

10 THE COURT: MS. CANNELLA, YOU GET THE LAST WORD.

11 MS. CANNELLA: THANK YOU, YOUR HONOR.

12 YOUR HONOR, MR. SCRIBNER STARTED HIS ARGUMENT BY
13 SAYING THAT ON OCTOBER 2ND, 2018, MR. PRENTKOWSKI SENT THE
14 DOCUMENTS, QUOTE, TO ME. THAT IS A TYPICAL RESPONSE IN A
15 SITUATION LIKE THIS FOR A DEFENSE LAWYER TO STEP IN FRONT OF
16 THE BULLET FOR THEIR CLIENT.

17 AUTOLIV ITSELF KNEW THAT THE DOCUMENTS EXISTED. IT
18 KNEW WHAT THE LAWYERS WERE ARGUING TO JUDGE DUFFEY. IT KNEW
19 WHAT THE LAWYERS WERE ARGUING TO THE ELEVENTH CIRCUIT. WE
20 HEARD A LOT OF EXCUSES ABOUT WHY THE DOCUMENTS WEREN'T
21 PRODUCED. WE DIDN'T HEAR A SINGLE EXCUSE ABOUT WHY
22 MISREPRESENTATIONS WERE MADE TO THE COURTS. NOTHING.

23 MR. SCRIBNER SAYS HE DID NOT KNOW ABOUT THESE
24 DOCUMENTS CONTRADICTING HIS ARGUMENTS, BUT AUTOLIV KNEW THE
25 ARGUMENTS WEREN'T TRUE. AUTOLIV GOT JUDGE DUFFEY'S ORDER.

1 AUTOLIV KNEW JUDGE DUFFEY'S WRITTEN ASSUMPTIONS WERE NOT TRUE.
2 AUTOLIV CONCEALED THAT FACT. IT DID NOT COME BACK TO JUDGE
3 DUFFEY AND TELL HIM.

4 WE DO NOT WANT FEES. THE FACT THAT MAZDA DIDN'T
5 PRODUCE DOCUMENTS IN THIS CASE, THE FACT THAT THE PRIOR TRIAL
6 COURT ORDERS THAT AUTOLIV HAS CITED AWARD FEES PROVE THE
7 PROBLEM WITH FEES. FEES DON'T PREVENT THIS CONDUCT. IT JUST
8 ENCOURAGES IT.

9 YOUR HONOR SAID TO MR. SCRIBNER YOU ARE THE ONLY
10 PERSON THAT I CAN ASK MY QUESTION TO. THE REASON HE IS THE
11 ONLY PERSON TO ASK THE QUESTION IS BECAUSE AUTOLIV DIDN'T BRING
12 ANYBODY HERE TO ANSWER THESE QUESTIONS. AUTOLIV DOES NOT CARE
13 ABOUT THE FACT THAT IT VIOLATED THESE COURT'S ORDERS, THAT IT
14 MADE MISREPRESENTATIONS, THAT IT CAUSED MS. ANDREWS 17 YEARS
15 OF -- OR 17 MONTHS OF DELAY. IT DOES NOT CARE ABOUT THE
16 DIFFICULTY IT PUT HER THROUGH. IT'S NOT EVEN HERE TO ANSWER
17 FOR ITS CONDUCT.

18 THERE WAS OTHER STATEMENTS THAT WERE MADE THAT ARE
19 NOT IN EVIDENCE. THERE IS NO EVIDENCE OF THEM THAT ARE
20 CONTRARY TO THE EVIDENCE. NUMBER ONE, WHO IS SAYING THAT THESE
21 PDF'S ARE NOT SEARCHABLE ON MR. HIRABAYASHI'S COMPUTER?

22 NUMBER TWO, MR. HIRABAYASHI LEFT EMPLOY OF AUTOLIV.
23 IF YOUR HONOR WILL LOOK AT DOCUMENT 228 ON THE RECORD, THERE IS
24 A STATEMENT FROM HIROKAZU HIRABAYASHI. HE SUBMITTED AN
25 AFFIDAVIT IN THIS CASE WHILE THE DOCUMENTS ON HIS COMPUTER WERE

1 BEING CONCEALED -- OR THE DOCUMENTS THAT HE FOUND WERE
2 CONCEALED.

3 NUMBER THREE. THE REPRESENTATION THAT AUTOLIV
4 PRODUCED THREE S.O.W.'S. THEY PRODUCED THREE THINGS THEY
5 CALLED S.O.W.'S IN THEIR RESPONSES, SO WE THOUGHT WE HAD
6 S.O.W.'S. BUT THEY WERE JUST LISTS OF, YOU KNOW, PRODUCT
7 NUMBERS, BASICALLY, NOTHING LIKE THE DOCUMENT THAT WE HAVE THAT
8 AUTOLIV KNEW EXISTED.

9 NUMBER FOUR. EXHIBIT NUMBER 2 THAT AUTOLIV
10 SUBMITTED. ON THE APRIL 2002 MAZDA BUSINESS TEAM UPDATE THAT'S
11 AN AUTOLIV INTERNAL DOCUMENT AUTOLIV SAYS UNDERNEATH THE J48C
12 PROGRAM, THIS PROGRAM, NUMBER THREE, S.O.W., QUOTE, "S.O.W.,"
13 STATEMENT OF WORK. "SOME IMPORTANT PLACES HAVE BEEN UNDER
14 TRANSLATION IN ENGLISH."

15 AUTOLIV IS USING THE S.O.W. FOR THE J48C PROGRAM.
16 REPRESENTATIONS THAT IT WAS NOT USING THAT S.O.W., THAT IT
17 WASN'T AFFECTING ANYTHING, THAT IT WASN'T SOMETHING THEY WOULD
18 FIND IN RELATION TO THE J48C, TO THE MAZDA3, IS FALSE. WE HAVE
19 A DOCUMENT RIGHT HERE. I'LL GIVE THE COURT MY COPY.

20 THE COURT: WELL, YOU CAN ALWAYS -- IF THIS IS YOUR
21 LAST COPY, YOU CAN JUST HOLD ONTO IT AND EMAIL IT TO ME.

22 MS. CANNELLA: NO, NO. THAT'S ALL RIGHT.

23 THE COURT: MS. CANNELLA?

24 MS. CANNELLA: YES.

25 THE COURT: LET'S TALK A FEW MINUTES ABOUT THE

1 ARGUMENTS BEING PUT FORTH THAT THEIR INTERPRETATION OF ACTIVELY
2 INVOLVED IS DIFFERENT. THAT WHEN THEY ARGUED TO JUDGE DUFFEY
3 ACTIVELY INVOLVED - I CAN'T REMEMBER THE NAME OF THE TWO
4 INDIVIDUALS THAT MR. SCRIBNER USED - THAT THEY WERE ON THE SAME
5 PAGE. IT'S JUST YOUR EXPERT IS INTERPRETING IT DIFFERENTLY.

6 TO ME, THIS CASE, ONE OF THE KEY THINGS IN THIS CASE
7 FOR ME IN DETERMINING WHETHER THERE NEEDS TO BE A SANCTION AND
8 WHAT TYPE OF SANCTION IS WHETHER OR NOT PEOPLE INTENTIONALLY
9 MISLED THE COURT.

10 MS. CANNELLA: YES, YOUR HONOR.

11 THE COURT: BUT THE ARGUMENT IS BEING MADE WE DIDN'T
12 MISLEAD THE COURT. WHEN WE SAID WE WERE NOT ACTIVELY INVOLVED,
13 WE WERE NOT. THAT STATEMENT YOU HAD UP HERE AND I READ WHEN
14 JUDGE DUFFEY ASKED MR. PRENTKOWSKI AND HE SAYS, NO, WE DIDN'T
15 THINK IT WAS -- THE ARGUMENT IS BEING MADE, WELL, THEY ARE
16 TALKING ABOUT SOMETHING ELSE, JUDGE.

17 MS. CANNELLA: YES, YOUR HONOR.

18 THE COURT: LET'S TALK ABOUT THAT.

19 MS. CANNELLA: LET'S TALK ABOUT THAT.

20 SO ON THE SCREEN ARE EXCERPTS FROM THE AUGUST 26,
21 2015 HEARING. AUTOLIV SAID WE DON'T DESIGN THE OCCUPANT
22 RESTRAINT SYSTEM. AND AUTOLIV ACTUALLY SAID THAT TO THE COURT
23 TODAY. THAT'S PART OF THE PROBLEM. IT'S JUST A TOTAL
24 UNREPENTANCE.

25 SO WE HAVE SHOWN THE COURT A DOCUMENT THAT SHOWS BOTH

1 FOR THE RETRACTOR AND FOR THE TORSION BAR THEY WERE BOTH
2 DESIGNED BEFORE THIS CASE EVER HAPPENED, BEFORE MAZDA WAS EVER
3 CONCEIVED OF, AND THEY ARE STILL SAYING THEY DON'T DESIGN IT.
4 SO THIS IS FROM THE HEARING.

5 AUTOLIV SAYS: WE DON'T DESIGN YOUR OCCUPANT
6 RESTRAINT SYSTEM.

7 THE COURT SAYS: SO, IN OTHER WORDS, YOU ONLY GET THE
8 FINAL INSTRUCTION. YOU DON'T GET EVOLUTIONARY DOCUMENTS OF
9 WHAT OTHER DESIGNS WERE CONSIDERED.

10 AUTOLIV SAYS: AFTER WE RECEIVE THE SPECIFICATION WE
11 PROVIDE A PRODUCT THAT MEETS OR EXCEEDS THE METRICS CONTAINED
12 WITHIN THAT SPECIFICATION. THEY GO TEST IT, "THEY" BEING
13 MAZDA. THEY MAY COME BACK AND SAY WE WANT SOMETHING DIFFERENT.
14 CAN YOU SWITCH OUT ITEMS TWO AND THREE? WE DO THAT. WE'VE GOT
15 TO MAKE SURE THAT IT PASSES FEDERAL REGULATIONS AND PASSES THE
16 SPECIFICATION AND THEY GO TEST IT AGAIN.

17 THE COURT IS ASKING, IT IS TRYING TO FIGURE OUT, DO
18 YOU HAVE EVOLUTIONARY DOCUMENTS?

19 AND WHAT DOES AUTOLIV SAY? WE RECEIVE SPECIFICATIONS
20 AND WE FILL IT TO THAT SPEC. THAT'S DECEIVING. THAT IS NOT
21 TRUE. THAT IS NOT THE FULL PICTURE. THE COURT IS TRYING TO
22 GET THE FULL PICTURE AND AUTOLIV WON'T GIVE IT TO HIM.

23 HERE'S ANOTHER ONE. THE COURT SAYS: HERE IS A
24 PRODUCT WE ARE TESTING -- OH. SO YOU GO BACK AND FORTH, YOU
25 HAVE JUST DESCRIBED, AND HERE IS THE SPECS. HERE IS THE

1 PRODUCT WE ARE TESTING. HERE IS WHAT WE WANT YOU TO CHANGE,
2 WHETHER RELATED TO THE TORSION BAR OR ANYTHING ELSE. YOU WOULD
3 HAVE PRODUCED ALL OF THAT? QUESTION.

4 AND THE ANSWER THAT AUTOLIV GAVE THE COURT IS KIND OF
5 LONG AND RAMBLING AND IT'S ON PAGE 87, IF THE COURT WANTS TO
6 SEE IT, AND IT GOES ON AND ON, BUT THE ANSWER IS: WE'VE GIVEN
7 YOU EVERYTHING FOR '05 AND WE UNDERSTAND THE COURT IS REQUIRING
8 US TO PRODUCE '04 TO '09. THAT WAS THE ANSWER. AND IT WAS --
9 THE ANSWER WAS VERY HARD TO EXTRACT.

10 IF YOUR HONOR READS THE WHOLE EXCERPT, YOU WILL SEE
11 THAT THE ANSWER WAS: WE'VE GIVEN YOU ALL THE COMMUNICATIONS.
12 AND THE COURT SAYS, YOU KNOW, OKAY. WELL, GREAT. AND THEN WE
13 SAY, NO, NO, NO, NOT JUST COMMUNICATIONS. AND AUTOLIV SAYS,
14 WELL, OKAY, YOU KNOW, WE UNDERSTAND THE COURT'S ORDER. AND WE
15 SAY, NO, NO, NO. LET'S MAKE SURE IT'S ALL DOCUMENTS RESPONSIVE
16 TO RPD23.

17 AND SO FINALLY, AFTER ABOUT A PAGE AND A HALF, WE GET
18 RESOLUTION ON THAT AND THAT'S RPD 23. AND LET ME TELL YOU
19 SOMETHING ELSE THAT IS INTERESTING ABOUT THAT. RPD23 IS WHAT
20 THE COURT RULED ON. IT'S THIS ONE. ALL DEVELOPMENT, ALL
21 DOCUMENTS REGARDING DEVELOPMENT AND SELECTION OF COMPONENTS OF
22 THE SEATBELT SYSTEM. THOSE ARE ALL THE DOCUMENTS WE HAVE BEEN
23 TALKING ABOUT TODAY.

24 WOULD YOU BELIEVE THAT IN THE SUPPLEMENT DISCOVERY
25 RESPONSES THAT WE GOT AFTER THAT NOVEMBER PRODUCTION, NOT ONE

1 DOCUMENT LISTED IN RESPONSE TO THIS RPD. WHY IS THAT? BECAUSE
2 THIS IS THE RPD THE COURT ISSUED THE ORDER ON. AND PRODUCING
3 DOCUMENTS IN RESPONSE TO THIS RPD IS AN ADMISSION OF VIOLATION
4 OF THE ORDER.

5 IT'S THAT KIND OF DECEIT THAT HAS GONE ON IN THE CASE
6 OVER AND OVER AGAIN THAT BELIES THIS IDEA OF, YOU KNOW, OOPS,
7 YOU KNOW, IT WAS AN ACCIDENT. COMING IN HERE AND SAYING THAT
8 THE DOCUMENTS WEREN'T FOUND BECAUSE THE JAPANESE GENTLEMAN
9 WAS -- LEFT THE EMPLOY WHEN WE HAVE AN AFFIDAVIT ON THE RECORD
10 THAT HE WAS WORKING THERE DURING DISCOVERY. YOU KNOW, NOT
11 RESPONDING TO RPD 23, NOT BEING HONEST WITH THE COURT, AND
12 SAYING THINGS LIKE THIS. WE ASKED, YOU KNOW, WHAT THEIR
13 INVOLVEMENT WAS. MAZDA PROVIDED AUTOLIV WITH ITS REQUIREMENTS
14 AND SPECIFICATIONS AND AUTOLIV JAPAN SUPPLIED MAZDA WITH ITS
15 PRODUCTS THAT MET THE REQUIREMENTS FOR THOSE SPECIFICATIONS.
16 THAT'S BEEN THE STORY THIS WHOLE TIME. NO ACTIVE INVOLVEMENT.

17 HERE IS THEIR RESPONSE IN THE MSJ REPLY: THERE IS NO
18 EVIDENCE THAT AUTOLIV WAS ACTIVELY INVOLVED IN THE DESIGN,
19 SPECIFICATION OR FORMULATION OF THE SEATBELT ASSEMBLY OR
20 TORSION BAR THRESHOLD. THAT'S WHAT THEY TOLD THE COURT.
21 THAT'S WHAT THE COURT BELIEVED. THAT IS NOT TRUE. AND SO IT
22 DOESN'T MATTER HOW YOU INTERPRET DAVENPORT.

23 AND HERE IS ANOTHER THING ABOUT DAVENPORT THAT
24 AUTOLIV DIDN'T MENTION. DAVENPORT INVOLVED A CASE WHERE THE
25 DEFENDANT DIDN'T MANUFACTURE THE PRODUCT. SO, YOU KNOW, TO SAY

1 ACTIVE INVOLVEMENT WAS SOME THING. IT WAS NEVER A THING. BUT
2 THAT'S NEITHER HERE NOR THERE. THAT'S JUST ANOTHER ONE OF
3 THOSE SLEIGHT OF HANDS THAT KEEPS GOING ON IN THIS CASE.

4 THIS IS AN EXCERPT FROM THE OOJ THAT AUTOLIV SENT US.
5 AUTOLIV BELIEVES THAT JUDGE DUFFEY WILL ENTER SUMMARY JUDGMENT
6 IN ITS FAVOR BECAUSE, QUOTE, STRICT LIABILITY DOES NOT APPLY TO
7 DESIGN DEFECT CASES AND BECAUSE PLAINTIFF HAS OFFERED NO
8 EVIDENCE THAT AUTOLIV WAS ACTIVELY INVOLVED IN THE DESIGN,
9 SPECIFICATION OR FORMULATION OF A DEFECTIVE COMPONENT PRODUCT
10 PART WHICH FAILED DURING THE USE OF THE PRODUCT AND CAUSED
11 INJURY. WE DIDN'T HAVE THAT EVIDENCE BECAUSE AUTOLIV DIDN'T
12 GIVE IT TO US AND AUTOLIV KNEW IT WASN'T TRUE, KNEW IT EXISTED.

13 YOUR HONOR ASKED MR. SCRIBNER ABOUT OUR INABILITY TO
14 ARGUE, TO MAKE THESE ARGUMENTS TO THE DISTRICT COURT. AND I
15 WANT TO BE CLEAR, AND I HOPE I HAVE BEEN, THAT IT'S NOT JUST
16 ABOUT WHAT WE COULD OR COULDN'T ARGUE. IT'S ABOUT AUTOLIV
17 SAYING THINGS THAT WEREN'T TRUE, USING THIS CONCEALMENT TO SAY
18 THINGS THAT WEREN'T TRUE. THAT'S WHY THE CASE IS DIFFERENT.

19 THIS IS KIND OF A SIDESHOW, BUT, YOU KNOW, IN THE
20 BRIEFING AUTOLIV MAKES A BIG DEAL ABOUT PLAINTIFF NOT ASKING
21 QUESTIONS TO KAMEI ABOUT THESE DOCUMENTS.

22 THE COURT: YES.

23 MS. CANNELLA: AND THE REASON WE DIDN'T ASK THOSE
24 QUESTIONS IS BECAUSE WE DIDN'T WANT TO HEAR MR. SCRIBNER'S
25 COACHED ANSWERS TO THEM. I MEAN WE HAVE HEARD IT. IF YOU READ

1 THE WHOLE DEPOSITION, IT'S LIKE A WINDUP DOLL. AUTOLIV WAS
2 FOLLOWING INSTRUCTIONS. AUTOLIV WAS FOLLOWING INSTRUCTIONS.
3 AUTOLIV WAS FOLLOWING INSTRUCTIONS. WE DIDN'T NEED MR. KAMEI
4 TO CONTINUE TO REPEAT THOSE THINGS.

5 WE BELIEVE IT'S CLEAR THAT AUTOLIV COMMITTED
6 MISCONDUCT AND THERE ARE ONLY TWO CHOICES, TO EITHER ENCOURAGE
7 THAT MISCONDUCT OR DISCOURAGE THAT MISCONDUCT.

8 THERE IS A SPEECH BY PRESIDENT ROOSEVELT BACK FROM
9 1910 AND IN IT HE PRAISES, QUOTE, THE MAN IN THE ARENA. AND HE
10 IS TALKING ABOUT THE PERSON WHO TRIES TO MAKE THINGS BETTER,
11 WHO, QUOTE, STRIVES VALIANTLY, WHO ERRS, WHO COMES SHORT AGAIN
12 AND AGAIN BECAUSE THERE IS NO EFFORT WITHOUT AN ERROR AND
13 SHORTCOMING BUT WHO DOES ACTUALLY STRIVE TO DO THE DEED.

14 THE QUOTE IS LONG AND THE COURT IS FAMILIAR WITH IT
15 AND I WON'T REPEAT IT ENTIRELY. BUT IT COMES TO MIND BECAUSE
16 WE KEEP SEEING THIS KIND OF MISCONDUCT IN THESE AUTO PRODUCT
17 CASES. WE SEE IT MORE AND MORE. AND DEFENDANTS HAVE BECOME SO
18 BOLD IN THEIR DISREGARD FOR COURT ORDERS THAT IT'S ALMOST HARD
19 TO ACCEPT IT. IT'S HARD FOR THE BRAIN TO BELIEVE IT SOMETIMES.

20 AND OUR FIRM SAW THIS IN THE HILL V. FORD CASE, WHICH
21 WAS IN GWINNETT STATE COURT, AND THE DEFENDANT THERE REPEATEDLY
22 VIOLATED COURT ORDERS SO MANY TIMES THAT THERE ENDED UP BEING A
23 MISTRIAL AND ACTUALLY STATED ON THE RECORD THAT IT BELIEVED IT
24 WAS ENTITLED TO VIOLATE THOSE ORDERS BECAUSE IT DISAGREED WITH
25 THEM.

1 THE STAKES ARE SO HIGH IN THESE AUTO PRODUCT CASES
2 BECAUSE THE PRODUCT IS IN MANY VEHICLES AND HAS THE POTENTIAL
3 TO AFFECT MANY CASES. AND SO IT BECOMES DIFFICULT OR HARDER
4 FOR AN AUTO PRODUCT DEFENDANT TO SAY, OKAY, WE ARE GOING TO
5 TURN OVER THE EVIDENCE THAT IS GOING TO PROVE WE ARE AT FAULT.
6 THAT'S SOMETHING AUTO PRODUCT COMPANIES NATURALLY DON'T WANT TO
7 DO.

8 THE COURT: WHAT MADE THEM TURN OVER THE HUNDRED AND
9 77 PAGES?

10 MS. CANNELLA: YOUR HONOR, THAT'S A GREAT QUESTION.
11 I THINK WE HEARD THE ANSWER TODAY. THEY DON'T THINK THEY ARE
12 IMPORTANT. THEY THINK THEY ARE RELATED TO, YOU KNOW, THE
13 SECOND GENERATION. THERE ARE OTHER DOCUMENTS OUT THERE. HAVE
14 NO DOUBT ABOUT THAT. THERE ARE MORE DOCUMENTS THAT WE HAVEN'T
15 SEEN. WE KNOW THAT.

16 SO WHY THEY PRODUCED IT IN STEGALL, IT WAS AN
17 ACCIDENT OR BECAUSE THEY DIDN'T THINK ANYBODY WAS GOING TO LOOK
18 THAT CLOSELY AT THEM OR BECAUSE THEY DIDN'T THINK THAT ANYBODY
19 WAS GOING TO BE ABLE TO REALLY USE THEM. BECAUSE THEY ARE
20 ABOUT COVERS AND SOME OF THEM ARE ABOUT, YOU KNOW, SEWING AND
21 THAT KIND OF THING. MAYBE THAT'S WHY. MAYBE IT WAS AN
22 ACCIDENT.

23 BUT REGARDLESS OF WHAT IT IS, THEY SURE WEREN'T GOING
24 TO GIVE THEM TO US UNTIL THEY FOUND OUT ABOUT US TALKING TO THE
25 STEGALL PEOPLE AND THAT'S WHAT MATTERS.

1 AND EVEN SETTING THAT ASIDE, NONE OF THAT, NONE OF
2 THAT EXCUSES COMING INTO THE COURT AND SAYING THINGS THAT
3 AREN'T TRUE. NONE OF THAT EXCUSES REPRESENTING TO THE COURT
4 THAT ALL WE DID WAS FILL AN ORDER TO A SPECIFICATION. WE
5 WEREN'T ACTIVELY INVOLVED. YOU CAN'T DO THAT. WE ALWAYS KNEW
6 THE TRUTH REGARDLESS OF THE DOCUMENTS.

7 THIS CASE IS A CASE STUDY IN THE PHENOMENON OF AUTO
8 MANUFACTURERS NOT WANTING TO PRODUCE DOCUMENTS. AUTOLIV TALKS
9 ABOUT MAZDA NOT PRODUCING DOCUMENTS. THAT'S A REALLY GREAT
10 POINT. WHY DON'T AUTO MANUFACTURERS PRODUCE THESE DOCUMENTS?
11 WHY DON'T THEY DO IT? BECAUSE IT'S GOING TO HURT THEM.

12 THE ARENA THAT THE COURT FINDS ITSELF IN IS THIS AUTO
13 PRODUCT PROBLEM. THE HESITATION AMONG COURTS TO SANCTION
14 VIOLATIONS OF COURT ORDERS SEEMS TO BE COMPOUNDING WITH THE
15 YEARS AS THEY GO BY. AND THE REASON FOR THAT IS THAT JUDGES
16 DON'T DISCOURAGE THIS MISCONDUCT. THEY SLAP ATTORNEY'S FEES OR
17 THEY MOVE ALONG AND THERE IS NO REAL PUNISHMENT FOR DOING THIS.

18 AUTOLIV IS HERE SAYING, WELL, LET'S JUST TRY THE
19 CASE. OKAY. YOU'VE GOT THEM. LET'S GO. THERE IS NO
20 PUNISHMENT FOR IT. WE COULD HAVE GOTTEN -- WE COULD HAVE LOST
21 ON APPEAL. MS. ANDREWS COULD HAVE TAKEN THE, YOU KNOW, OFFER
22 TO GET RID OF THE CASE. SHE COULD HAVE TRIED TO SETTLE IT.
23 ANYTHING COULD HAVE HAPPENED AND THE TRUTH WOULD HAVE NEVER
24 COME OUT. AND THERE IS NO, THERE IS NO DOWNSIDE FOR AUTOLIV TO
25 DOING THAT, NO DOWNSIDE UNLESS THERE IS A REAL PUNISHMENT FOR

1 IT.

2 WHETHER THE COURT GRANTS OR DENIES THE MOTION FOR
3 SANCTIONS IT WILL IMPACT THE CONDUCT OF AUTO PRODUCT DEFENDANTS
4 GOING FORWARD. THEY WATCH THESE DECISIONS. THEY MONITOR THEM.
5 THEY DECIDE WHETHER THEY ARE ENCOURAGED TO COMMIT THIS CONDUCT
6 OR WHETHER THE CONDUCT IS TOO EXPENSIVE, TOO RISKY.

7 WE KNOW IT'S A HARD DECISION, BUT EITHER THE KIND OF
8 CONDUCT THAT THE COURT HAS SEEN WILL BE ENCOURAGED OR
9 DISCOURAGED. THOSE ARE THE ONLY TWO OPTIONS. IT'S NOT UP TO
10 US OR TO AUTOLIV. NO ONE HAS THE POWER TO ENFORCE COURT ORDERS
11 BUT THE COURT ITSELF.

12 WE RESPECTFULLY REQUEST THE COURT GRANT THE MOTION
13 FOR SANCTIONS AND ENTER EITHER A DEFAULT OR PRECLUDE AUTOLIV
14 FROM ENTERING EVIDENCE OR MAKING ANY ARGUMENT THAT SOME OTHER
15 PERSON WAS AT FAULT FOR MR. ANDREWS' INJURIES AND DEATH.

16 THANK YOU.

17 THE COURT: THANK YOU.

18 THANK YOU ALL.

19 I WAS GOING TO FINISH READING WHAT YOU ALL HAVE GIVEN
20 ME TODAY, GO BACK AND LOOK AT WHAT I HAVE READ BEFORE. I WANT
21 TO APOLOGIZE TO YOU ALL UP FRONT. I WISH I COULD GIVE YOU ALL
22 A TRIAL DATE, BUT I CAN'T GIVE YOU A TRIAL DATE UNTIL I CAN
23 TELL YOU WHAT YOU ARE GOING TO BE TRYING.

24 BUT WE ARE GOING TO TRY TO GET AN ORDER BACK TO YOU
25 ALL AS FAST AS POSSIBLE, BUT THERE ARE -- IT'S GOING TO TAKE A

1 LITTLE TIME BECAUSE I HAVE ONE OR TWO OTHER CASES, AN ELECTION
2 CASE I'VE GOT TO RULE ON. BUT I WANT TO GET YOU ALL AN ORDER
3 AS QUICK AS POSSIBLE. I WILL START WORKING ON THIS NOT
4 TONIGHT. I WORKED ON IT LAST NIGHT. I LOVE YOU ALL BUT I'M
5 NOT GOING TO WORK ON IT TWO STRAIGHT NIGHTS. BUT WE'LL START
6 WORKING ON IT AGAIN THIS WEEKEND.

7 NOW, LET'S MAKE SURE I HAVE EVERYTHING FROM THE
8 PLAINTIFF AND I HAVE EVERYTHING FROM THE DEFENDANT SO WHEN I
9 START WORKING ON IT. I KNOW I'M GOING TO GET 54 FROM YOU ALL.

10 MS. CANNELLA: YES.

11 THE COURT: IS THAT THE ONLY THING I NEED ELSE FROM
12 THE PLAINTIFF?

13 WHILE THEY ARE THINKING, MR. SCRIBNER, DO I HAVE
14 EVERYTHING FROM YOU ALL THAT YOU WANT ME TO HAVE?

15 MR. SCRIBNER: I THINK SO, YOUR HONOR.

16 MS. CANNELLA: YOUR HONOR, WE ARE ALSO GOING TO SEND
17 PLAINTIFF'S EXHIBIT 49. IN ORDER TO AVOID BURDENING THE
18 COURT'S EMAIL SYSTEM, WE CAN HAND-DELIVER COPIES IF THAT'S ALL
19 RIGHT.

20 THE COURT: THAT'S FINE WITH ME.

21 MS. CANNELLA: THANK YOU.

22 THE CLERK: 49 WASN'T COMPLETE. THE 49 THEY GAVE ME
23 WASN'T COMPLETE.

24 THANK YOU ALL. I REALLY APPRECIATE IT. YOU ALL MADE
25 IT A TOUGH DECISION, BUT THANK YOU ALL.

1 MS. CANNELLA: THANK YOU, YOUR HONOR.

2 THE COURT: HAVE A GREAT AFTERNOON AND A GREAT WEEK.

3 MR. BUTLER: DOES THE COURT NOT WANT TO HEAR
4 AUTOLIV'S MOTION ABOUT MR. CARUSO?

5 THE COURT: I WILL HEAR ALL THE MOTIONS YOU ALL WANT
6 TO TELL ME TODAY. THAT'S WHY I ASKED YOU IS THERE ANYTHING
7 ELSE.

8 MR. SCRIBNER: I THINK WE HAVE TWO ADDITIONAL DAUBERT
9 MOTIONS AND THEY HAVE TWO ADDITIONAL DAUBERT MOTIONS.

10 THE COURT: LET'S SIT BACK DOWN AND HEAR THEM.

11 MS. CANNELLA: CAN WE TAKE A BRIEF RESTROOM BREAK?

12 THE COURT: YES.

13 MS. CANNELLA: FIVE MINUTES?

14 THE COURT: YES.

15 MR. SCRIBNER: THANK YOU, YOUR HONOR.

16 MS. CANNELLA: THANK YOU.

17 THE COURT: WE ARE GOING TO TAKE A TEN-MINUTE RECESS
18 AND START BACK AT 3:50.

19 MR. BUTLER: THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU ALL.

21 (RECESS)

22 OKAY. ARE YOU ALL READY? I'M READY.

23 MR. BUTLER: YOUR HONOR, WE'VE GOT TWO MOTIONS THAT
24 HAVE TO DO WITH AUTOLIV'S TWO EXPERTS, MS. RAPHAEL,
25 DR. RAPHAEL, AND MR. VAN ARSDELL.

1 THE COURT: YES.

2 MR. BUTLER: AND WE WERE TALKING ABOUT THAT DURING
3 THE BREAK AND WE THINK THOSE TWO MOTIONS ARE WELL BRIEFED, AND
4 WITH RESPECT TO THE COURT'S TIME, WE DON'T REALLY THINK THAT
5 ORAL ARGUMENT IS NECESSARY.

6 THE COURT: THEY ARE WELL BRIEFED. I AM NOT GOING TO
7 ARGUE WITH YOU THERE. THEY ARE WELL BRIEFED.

8 MR. BUTLER: THE DECISION, YOU KNOW, WHAT THE COURT
9 DECIDES WITH RESPECT TO THE MOTION FOR SANCTIONS CAN IMPACT
10 WHAT THE COURT DECIDES WITH RESPECT TO THOSE TWO MOTIONS AND I
11 WON'T ARGUE WHY SO WE JUST SAVE THE COURT SOME TIME.

12 THE COURT: THANK YOU, MR. BUTLER. THANK YOU,
13 MR. SCRIBNER.

14 MR. SCRIBNER: I FIND MYSELF IN STARK AGREEMENT. I
15 WAS JUST GOING TO SAY THE EXACT SAME THING. WE HAVE TWO
16 ADDITIONAL DAUBERT MOTIONS. THEY REALLY ARE BETTER ON THE
17 PAPERS. THE LAW IS, YOU KNOW, WHAT THE LAW IS AND SO WE AGREE.

18 THE COURT: ALL RIGHT.

19 MR. BUTLER: I DON'T KNOW THAT I AGREE WITH RESPECT
20 TO AUTOLIV'S MOTION ABOUT MR. CARUSO. THAT'S THE ONLY THING
21 MS. CANNELLA ASSIGNED TO ME AND I'VE GOT A LOT I WANT TO SAY
22 ABOUT IT.

23 THE COURT: SHE'LL PROBABLY LET YOU MAKE YOUR
24 ARGUMENT BACK AT THE OFFICE.

25 MR. BUTLER: WELL, I'VE GOT ALL MY BULLETS READY,

1 YOUR HONOR.

2 MS. CANNELLA: NO, YOUR HONOR.

3 MR. BUTLER: AND THE FIRST THING I WOULD SAY IS WE
4 DISAGREE WITH THE CHARACTERIZATION THAT IT'S A DAUBERT MOTION.
5 IT'S NOT A DAUBERT MOTION. IT'S A MOTION IN LIMINE JUST LIKE
6 THE MOTION WITH RESPECT TO MR. MEYER. IT'S A MOTION TO TRY TO
7 KEEP OUT EVIDENCE THAT'S LABELED A DAUBERT MOTION. I HAVE SEEN
8 LOTS OF DAUBERT MOTIONS. THIS AIN'T ONE. BUT IF MR. SCRIBNER
9 DOESN'T WANT TO ARGUE HIS MOTIONS, THEN I GUESS I'LL SIT DOWN.

10 MR. SCRIBNER: TO BE CLEAR, I THINK MINE IS A DEAD
11 BANG WINNER, BUT WE DON'T NEED TO ARGUE.

12 THE COURT: ALL RIGHT.

13 MR. BUTLER: WELL, MY REPLY WOULD BE THAT IT'S A DEAD
14 BANG WINNER.

15 THE COURT: I'M GOING TO LET IT STAY RIGHT THERE.

16 THANK YOU ALL.

17 MR. BUTLER: THANK YOU, YOUR HONOR.

18 MS. CANNELLA: THANK YOU, YOUR HONOR.

19 THE COURT: HAVE A GREAT DAY.

20 MR. SCRIBNER: THANKS.

21 MS. CANNELLA: THANK YOU.

22 (PROCEEDINGS CONCLUDED)

23

24

25

1 C E R T I F I C A T E

2

3 UNITED STATES OF AMERICA

4 NORTHERN DISTRICT OF GEORGIA

5 I, DAVID A. RITCHIE, OFFICIAL COURT REPORTER OF THE
6 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
7 GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING 200 PAGES
8 CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID
9 COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER
10 THEREIN STATED.

11 IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS,
12 THE 22ND DAY OF JUNE, 2019.

13

14

15

16 DAVID A. RITCHIE
17 OFFICIAL COURT REPORTER
18 NORTHERN DISTRICT OF GEORGIA

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UNITED STATES DISTRICT COURT